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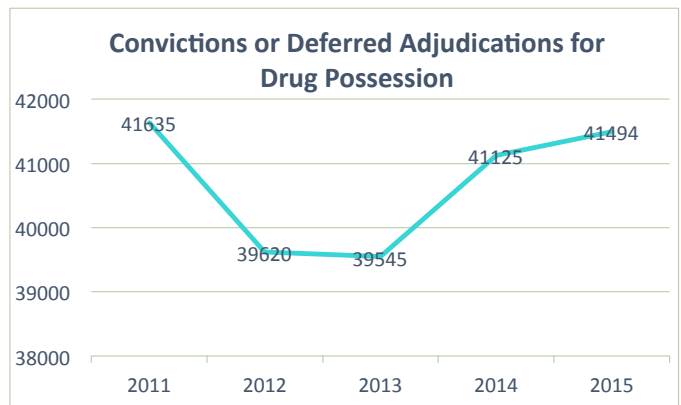
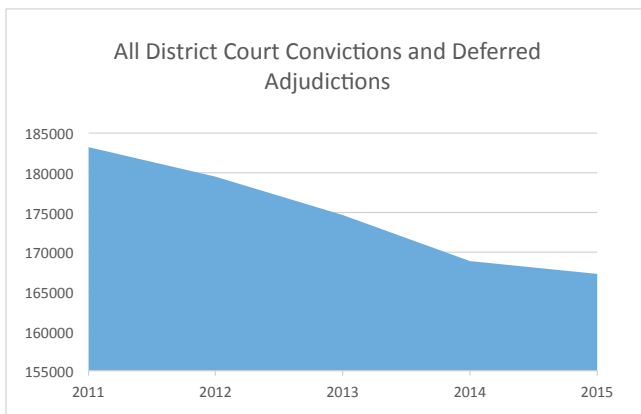
WRITTEN TESTIMONY 2016

House Committee on Corrections

Dear Chairman Murphy,

Thank you for this opportunity to testify on Interim Charge #3: **“Study incarceration rates for non-violent drug offenses and the cost to the state associated with those offenses. Identify alternatives to incarceration, including community supervision, that could be used to reduce incarceration rates of non-violent drug offenders.”**

In 2015, there were 41,494 people who received a conviction or deferred adjudication for drug possession in a district court.¹ District courts handle all cases originally filed as felony criminal matters, so these convictions directly impact incarceration rates in Texas.² The high number of convictions arising out of district courts is part of an **upward trend in drug convictions**, despite a **decline in the overall number of people arrested and convicted for all crimes**. In fact, between 2011 and 2015, there were 16,034 fewer overall district court convictions, an 8.7 percent reduction.



The counter-trend of increasing drug possession convictions is concerning. While the overall number of people sent to prison dropped between 2011 and 2015, the number of people sentenced to state jail for drug possession was two percent higher in 2015 than in 2011.³ It cost the state more than \$67 million to incarcerate people in state jails for low-level drug offenses in 2014.⁴ This is a staggering sum, especially when one considers that incarceration expenditures did not result in future reductions in drug possession offenses. The factors driving down overall convictions have seemingly failed to impact drug convictions. There are at least two reasons for this, explained below.

CRIMINALIZING ADDICTION FAILS TO REDUCE DRUG ABUSE, CREATING A CYCLE OF INCARCERATION

First, minor drug possession cases are classified as felonies, even for possession of less than one gram of a controlled substance (the equivalent of a sugar packet). At that small amount, law enforcement is often dealing with intractable issues more related to substance abuse than criminality. There is strong evidence that merely creating a harsh or punitive consequence does little to reduce the likelihood of substance use.⁵

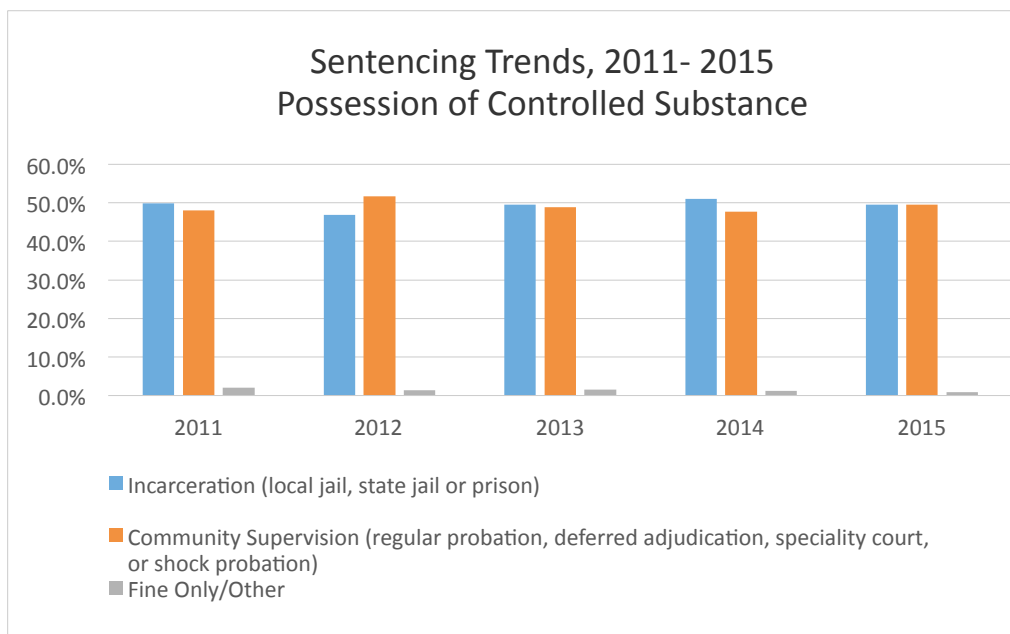
In fact, many of the people who deeply desire help for drug addiction are arrested, given the limited access to treatment for those who need it.⁶ Nearly two-thirds of all state and federal funds spent to address the problems of substance abuse go either to emergency room visits or to criminal justice agencies, with only a fraction of the total dollars allocated to treatment. For many people, the only way to access treatment is through the criminal justice system, a very sad statement given the lifetime consequences that come with a felony conviction.

STRATEGIES TO DIVERT PEOPLE FROM PRISON OFTEN FAIL TO DIVERT THOSE WHO NEED THE PROGRAMS THE MOST

A second factor impacting high drug conviction numbers is that not everyone who enters the criminal justice system with a drug or alcohol abuse problem actually receives treatment. Those who go to prison can only receive these programs by a vote of the Parole Board, and those sentenced to state jail are simply not required to participate in treatment programming. Again, this results in a cycle of incarceration, as people who are released from confinement fail to have the tools to live successfully. To address this, we must divert people from prison entirely, including by utilizing strong community supervision strategies.

Probation is far less expensive than incarceration in county jail or state jail, costing the state only \$1.63 per person per day compared to \$47.30 per day for state jail incarceration,⁷ and an average of \$60.00 per person per day for county jail incarceration.⁸ And community supervision is often more effective at addressing addiction and mental illness than incarceration: Individuals on probation frequently have more access to drug treatment and mental health services than those incarcerated, and treatment programming results in lower levels of re-offending than strict incarceration.⁹

Yet, despite years of reform, the percentage of those adjudicated for felony drug possession who receive some form of community supervision has not changed. For the past five years, roughly 49 percent of those adjudicated for drug possession were sentenced to probation, deferred adjudication, or specialty courts, with 50 percent or more sentenced to incarceration. **Until the percentage of overall drug possession cases receiving community supervision increases significantly, it is unlikely that we will see a downward trend in drug possession convictions or the related cost of incarceration.**

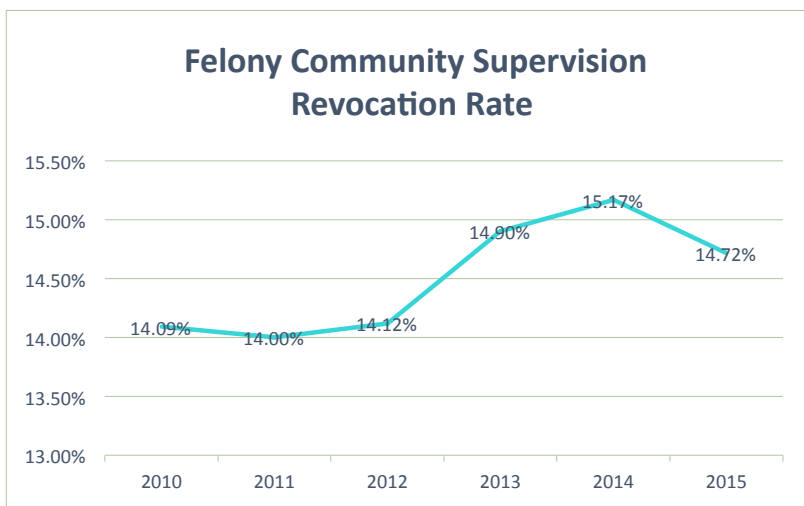


Why is community supervision not utilized more frequently for drug possession cases? When dealing with the problems of drug addiction, probation often is not considered a viable option given the rigorous supervision terms and the fears of relapse. People with substance abuse issues are likely to experience a host of problems that make it difficult or impossible to meet the conditions of community supervision; they may be prone to employment and housing instability, the two main criteria that judges expect to see before sentencing someone to probation. In fact, nearly 31 percent of those with addiction problems are homeless at the time of arrest.¹⁰

Community supervision is challenging for even the most stable individual. Those on the probation caseload must pay up to \$60 per month in probation fees, not including out-of-pocket expenses related to treatment, electronic monitoring, classes, court fees, and restitution.¹¹ Community supervision departments must collect these fees during the early months when the probationer is most likely to relapse or commit a new offense, largely because the state allotment of funding for probation is so small and not available to departments during those early months.

Further, people on probation must fulfill community service requirements, attend frequent visits with probation officers, and complete all other requirements. For someone in the grips of addiction at the start of community supervision, these are nearly impossible demands. Even with the advent of drug courts, the number of people who opt for some form of community supervision for drug possession has not increased.

Given the difficulty of succeeding on probation for those with drug addiction issues, it may not be surprising that the percentage of those on the probation caseload whose community supervision is revoked has actually increased since 2010. More than 14 percent of the direct felony probation caseload was terminated and sent to the Texas Department of Criminal Justice (TDCJ) in 2015.¹² The majority of those whose probation was revoked and who were sent to TDCJ were initially placed on probation for a drug or property offense. Further, more than half of all revocations were for failing to meet the conditions of supervision, so-called “technical violations, rather than for new offenses.¹³ Given that nearly one third of all new receives to TDCJ were from probation revocations,¹⁴ a naggingly high revocation rate – especially for drug offenses – threatens to keep incarceration rates high when they should be dropping.



COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS TO BETTER ADDRESS DRUG POSSESSION OFFENSES

- **Strengthen Community Supervision**

Community supervision departments would benefit from a funding formula that allows them to receive a larger portion of the state share of probation costs early in each probationer’s term of community supervision. **Front-loading funding during the most intensive period of supervision would allow a department to provide more intensive supports when they are needed,** without as much concern

about collecting probationer fees until the individual has completed treatment and achieved employment and housing stability. This, in turn, would facilitate lowered revocation rates.

Further, probation departments should spend the majority of their time with cases that represent the highest levels of need. **Providing financial incentives to community supervision departments for early termination of probation for those who have successfully completed all requirements would decrease the reliance on fees from low-risk cases while allowing officers to focus on those with higher levels of risk and needs.** Again, this would facilitate decreases in probation revocations.

It is also imperative that we evaluate what we expect from probationers, especially those charged with nonviolent drug offenses. As stated previously, most are dealing with substance abuse issues that limit their ability to successfully complete all of the requirements of community supervision. **Allowing these individuals to count treatment and rehabilitative programming toward community service requirements would alleviate one burden. Establishing a sliding scale for fees and allowing unemployed probationers to count community service hours toward fees would alleviate yet another burden.** Taken together, these reforms will increase the number of people who opt for probation, helping the state to achieve even greater prison diversion goals.

- **Reclassify Minor Drug Possession Offenses from a Felony to Misdemeanor and Increase Access to Probation**

Texas spends tens of millions of dollars every year incarcerating individuals for drug possession offenses that are punished more harshly than necessary. These expenditures have not resulted in lower drug arrests, and the incarceration rate for drug offenses has not decreased. Individuals can receive up to two-year sentences for possessing less than a gram of a controlled substance.

In fact, during the 2013-2014 biennium, 16,271 individuals were sentenced to state jail for a drug conviction¹⁵ – and of these, 88% were convicted of possession of less than a gram of a controlled substance without the intent to deal or distribute.¹⁶ **Personal use-level possession of drugs should be dealt with at the local, misdemeanor level, utilizing strong probation methods instead of continuously cycling individuals through brief state jail terms without post-release supervision.**

Citations

¹ Office of Court Administration, Annual Statistical Reports, 2011 – 2015, <http://www.txcourts.gov/statistics/annual-statistical-reports/2015.aspx>.

² State of Texas Judicial Branch, “Texas Courts: A Descriptive Summary.” P.3, <http://www.txcourts.gov/media/994672/Court-Overview.pdf>.

³ Texas Department of Criminal Justice, Statistical Reports – 2011 - 2014.

⁴ Texas Department of Criminal Justice, Statistical Report, 2014, p. 1, https://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf.

See also: Legislative Budget Board (LBB), *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, February 2015, 4, 6, http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/1440_Criminal_Juvenile_Justice_Uniform_Cost_Report.pdf. In FY 2014 Texas spent as much as \$53.87 per person per day incarcerate one individual in prison and as much as \$47.30 to incarcerate one individual in state jail, and there were 3,881 on hand in state jails for drug possession in 2014.

⁵ Kelly, William, *Criminal Justice at the Crossroads: Transforming Crime and Punishment*, 2015, Columbia University Press, New York, ebook location 5014.

⁶ Kelly, William, *Criminal Justice at the Crossroads*, ebook location 5014.

⁷ Legislative Budget Board (LBB), *Criminal and Juvenile Justice Uniform Cost Report: Fiscal Years 2013 and 2014*, February 2015, 4, 6.

⁸ Derived from Immigration Detainer Report produced by Texas Commission on Jail Standards on 6/1/2015. Available: <http://www.tcjs.state.tx.us/docs/ImmigrationDetainerReportCurrent.pdf>.

⁹ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Association, Center for Substance Abuse Treatment, *The National Treatment Improvement Evaluation Study: NTIES Highlights, 1997*, <http://www.ncjrs.gov/nties97/index.htm>. Also see: Dustin Johnson, Ph.D., “Community Corrections Facility Outcome Study of FY 2008 Discharges: Texas Department of Criminal Justice-Community Justice Assistance Division: Research and Evaluation,” May 2011, 13, 23 (individuals completing residential programs have significantly lower two-year arrest rates and incarceration rates than those who do not complete their program).

¹⁰ Kelly, William, *Criminal Justice at the Crossroads*, ebook location 5024

¹¹ Government Code, Title 2. Judicial Branch, Subtitle F. Court Administration, Chapter 76. Community Supervision and Corrections Departments, Sec. 76.015. ADMINISTRATIVE FEE.

¹² Texas Department of Criminal Justice, Report to the Governor and Legislative Budget Board on the Monitoring of Community Supervision Diversion Funds, December 1, 2015, p. 6 – 8, http://www.tdcj.texas.gov/documents/cjad/CJAD_Monitoring_of_DP_Reports_2015_Report_To_Governor.pdf.

¹³ Ibid.

¹⁴ Ibid. According to TDCJ, there were 71,325 new receives to prison in 2014, and there were 24,096 felony probation revocations to TDCJ the same year.

¹⁵ Texas Department of Criminal Justice, Fiscal Year 2011 Statistical Report (2012) and Fiscal Year 2012 Statistical Report (2013).

¹⁶ Open Records Request, Texas Department of Criminal Justice; *data available upon request*.