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FACT SHEET 2015

HB 3326

## Reclassify Certain Nonviolent Misdemeanor and Felony Offenses

*Provide a meaningful opportunity to access community resources and limit reentry barriers*

### NEEDLESSLY HIGH PENALTIES HARM BOTH INDIVIDUALS AND THEIR COMMUNITIES

Texas spends billions of dollars every year incarcerating individuals for offenses that are punished more harshly than necessary. Individuals can receive up to two-year sentences for possessing less than a gram of a controlled substance, repeated prostitution offenses, and property crimes involving outdated monetary thresholds.

**Drug Offenses:** In the 2011-2012 biennium, 16,262 individuals were sentenced to state jail for a drug conviction<sup>1</sup>—of these, 88% were convicted of possession less than a gram of a controlled substance without the intent to deal or distribute.<sup>2</sup> **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.**

**Property Crimes:** The monetary ranges of dollar amounts that apply to property offenses, including criminal mischief, graffiti, and theft, have not been changed since 1993 and therefore fail to reflect more than two decades of inflation. What amounted to a Class A misdemeanor 20 years ago may now constitute a state jail felony—a de facto “criminal inflation” that was not intended by the authors of the 1993 legislation. **Individuals serving sentences that are disproportionate to the value of the property damaged is costly to taxpayers, depletes public safety resources that can be directed towards individuals who pose a high risk to public safety, and further burdens jails and prisons.**

**Prostitution:** Almost all individuals convicted of prostitution share many common characteristics, among them substance abuse, mental illness, homelessness, and, above all, a history of sexual abuse and profound trauma. The 2001 legislation (HB 460) that made prostitution a felony offense in Texas has not helped to keep the public safe, which is the philosophical foundation of our criminal laws, nor has it addressed victimization. In fact, **keeping prostitution a felony has only served to drive those who are trapped in prostitution further into the shadows** while allowing those who solicit prostitution to go unpunished.

### KEY FINDINGS

- Probation is far less expensive than incarceration in county jail or state jail, costing the state only \$1.63 per person per day.<sup>3</sup> And it 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.<sup>4</sup>
- Michael McSpadden, a Republican and longtime district court judge in Harris County, believes that harsh drug possession penalties should be reduced. McSpadden and 11 fellow Harris County judges sent a letter to the chairman of the Senate Criminal Justice Committee saying that “the public has realized that draconian punishment of minor drug offenses as state jail felonies is not working, and as judges, we hear countless complaints from trial juries and grand juries who do not believe these cases should be tried as felonies.”<sup>5</sup>

*Continued on reverse.*

- Property-related crimes comprise nearly 13% of the population in prison and 50% of the population in state jail facilities, with burglary and larceny representing the top property offenses (84% of all property offenses in prison and 70% of all property offenses in state jail facilities).<sup>6</sup> Individuals in prison who have been convicted of property crimes cost taxpayers more than \$918,000 per day to incarcerate and more than \$335 million annually, while individuals in state jails who have been convicted of property crimes cost taxpayers nearly \$250,000 per day to incarcerate and almost \$91 million annually.<sup>7</sup>
- According to data provided by the Texas Human Trafficking Prevention Task Force in its 2014 report, Texas saw 737 human trafficking incidences and 210 human trafficking-related arrests between January 1, 2007, and December 14, 2014, with 85 convictions.<sup>8</sup> In addition, the Texas Department of Criminal Justice (TDCJ) reported that, as of August of 2014, there were 98 individuals serving sentences for human trafficking-related offenses or compelling prostitution.<sup>9</sup>

### **COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT HB 3326 BY REPRESENTATIVE SENFRONIA THOMPSON**

**In an effort to ensure that offenses are punished at a level consistent with the crime committed, HB 3326 will update the following offenses by either decreasing the penalty by one degree or updating the monetary thresholds:** possession of less than an ounce of marijuana; possession of less than a gram of a controlled substance in Penalty Group 1; criminal mischief; graffiti; burglary of a building other than a habitation; theft; theft of service; forgery; credit card or debit card abuse; fraudulent use or possession of identifying information; and prostitution.

### **Citations**

<sup>1</sup> Texas Department of Criminal Justice, Fiscal Year 2011 Statistical Report (2012) and Fiscal Year 2012 Statistical Report (2013).

<sup>2</sup> Open Records Request, Texas Department of Criminal Justice; *data available upon request*.

<sup>3</sup> 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](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 to incarcerate one individual in prison and as much as \$47.30 to incarcerate one individual in state jail.

<sup>4</sup> 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).

<sup>5</sup> Letter from Judge Michael McSpadden of the 209th District Court to State Senator John Whitmire, January 3, 2013, <http://www.scribd.com/doc/139764249/Letter-from-Judge-Michael-McSpadden-of-the-209th-District-Court-to-State-Senator-John-Whitmire>.

<sup>6</sup> Texas Department of Criminal Justice, *Statistical Report: Fiscal Year 2014*, 1, 10-11, [http://www.tdcj.state.tx.us/documents/Statistical\\_Report\\_FY2014.pdf](http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2014.pdf). TDCJ reported a total of 17,053 individuals on hand in prisons and a total of 5,267 individuals on hand in state jails for property offenses.

<sup>7</sup> *Supra*, note 3.

<sup>8</sup> The Human Trafficking Prevention Task Force Report, 2014. Presented to the Texas Legislature, Dec. 2014, 3, [https://www.texasattorneygeneral.gov/files/agency/20142312\\_htr\\_fin.pdf](https://www.texasattorneygeneral.gov/files/agency/20142312_htr_fin.pdf).

<sup>9</sup> *Ibid*, 3.