



WRITTEN TESTIMONY

**SUBMITTED BY DOMINIC GONZALES, PROGRAM DIRECTOR
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REGARDING HOUSE BILL 1610

SENATE COMMITTEE ON CRIMINAL JUSTICE

MAY 1, 2007

Dear Members of the Committee,

My name is Dominic Gonzales. I am a Project Director at the Texas Criminal Justice Coalition. Thank you for allowing me this opportunity to present testimony regarding House Bill 1610.

H.B. 1610 closes a loophole in current law which has contributed to the unnecessary incarceration of hundreds of low-level drug-possession offenders annually; this bill allows individuals with previous misdemeanor convictions to qualify for probation. This will save taxpayers money by reducing incarceration, and will also treat individuals more fairly who have been adjudged to have committed less serious offenses.

WHAT IS THE PROBLEM?

Passed into law in 2003, House Bill 2688 by Rep. Ray Allen mandated that certain first-time drug offenders convicted of a state jail felony receive community supervision (probation) so as to ensure that they receive treatment for their addictions rather than incarceration. However, there are long waiting lists for treatment in most counties, and many of these offenders commit new state jail felony drug offenses before ever receiving treatment. Under current law, the initial state jail conviction precludes these now second-time state jail defendants from mandatory placement on probation.

Some defendants, during the criminal process for their first state jail felony, have been receiving a reduction in punishment to a Class A misdemeanor (which means they are serving time in a county jail, not a state jail). But in many cases, these punishment reductions are not being taken into account during the criminal process for the second state jail conviction; instead, the individual's first (but reduced) state jail felony is still considered to have been a state jail felony, thereby precluding him/her from mandatory placement on probation.

As a result, the incarceration of state jail felony offenders in Harris County's jails increased after the 2003 law by 188% in 2005. Harris County, home to the state's largest urban area, has more than 4 times the number of state jail felony offenders in county jail as Dallas County.

WHAT DOES H.B. 1610 DO?

H.B. 1610 by House Corrections Chairman Jerry Madden expands community supervision to eligible drug offenders that have a prior state jail felony conviction that was punished as a misdemeanor. In other words, the bill would allow a judge to put low-level drug offenders on probation if their previous felony conviction was reduced to a Class A misdemeanor. This ensures that low-level drug offenders who are convicted of small quantity possession offenses can be diverted to community supervision with drug treatment, even if the offender had to serve time for a prior drug possession conviction.

WHY IS H.B. 1610 NEEDED?

Harris County cannot afford to incarcerate people unnecessarily. A year prior to H.B. 2668's enactment, Houston had an average of 339 state jail felons serving time in the Harris County jail. In 2006, the *Houston Chronicle* reported that Harris County often houses 1,300 state jail felony inmates. At a cost of \$40 per day per inmate, such an increase in the number county jail inmates costs

millions of dollars. If the upward trend in the number of state jail felons continues, Harris County will be spending at least \$10 million per year to house them.

There are concerns that H.B. 1610 could increase the Harris County jail population because of offenders being held while awaiting available space in treatment programs or as a result of probation revocations, intermediate sanctions, or “jail therapy.” However, passage of this bill in conjunction with the implementation of effective progressive sanctions programs in state community corrections departments would prevent such a problem from occurring.

Ultimately, alternatives to incarceration for low-level drug offenders work better and at a lower cost to the State – in fact, treatment and supervision cost on average \$2 per day, compared to incarceration costs of \$40 per day. Furthermore, incarceration alternatives are necessary to prevent recidivism and prison over-crowding. As the number of state jail felons held in county jails rises, the negative effects multiply: incarceration leads to a higher recidivism rate than treatment, causing an increase in crime, and housing state jail felons exacerbates the overcrowding crisis in Harris County jails. Harris County, which recently failed several jail inspections, must resolve its overcrowding problem, and must comply with the state directive to divert its lowest level offenders. H.B. 1610 will ensure this happens.

I appreciate the opportunity to testify today before the committee and to offer our organization’s ideas on this important issue. H.B. 1610, by closing a statutory loophole, can result in savings to taxpayers and better justice to those directly affected.