



**WRITTEN TESTIMONY**

**SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR  
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**REGARDING HOUSE BILL 337**

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON CRIMINAL JURISPRUDENCE**

**MARCH 20, 2007**

Dear Members of the Committee,

My name is Ana Yáñez-Correa. I am the Executive Director of the Texas Criminal Justice Coalition. Thank you for allowing me this opportunity to present testimony regarding House Bill 337.

Fixing the system of probation technical revocations is one of the most pressing issues before the legislature this session. Unless we eliminate the unnecessary incarceration of individuals who are attempting to change their lives for the better, our prisons will remain overcrowded, real rehabilitation will be stalled, and public safety will not be improved.

**CORRECTING PROBATION IS FUNDAMENTAL TO PREVENTING PRISON OVERCROWDING.**

Texas prisons are currently filled to capacity, and the state is expected to require 11,000 new beds by 2011 if current rates of incarceration go unchanged. Some have advocated the construction of new prisons to handle this crisis, but this proposal would be costly and fail to correct the fundamental cause of overcrowding: high rates of recidivism among offenders, which creates a revolving back door for institutional facilities. Texas can avoid the bandage approach of prison construction and address overcrowding at its root by correcting policies that lead to high rates of offender recidivism, including probation revocation.

**TECHNICAL REVOCATIONS ARE A MAJOR SOURCE OF PRISON OVERCROWDING BUT ARE NOT BASED ON ACTUAL CRIMINAL OR DANGEROUS BEHAVIOR.**

Individuals who are removed from community supervision and sent to state prison or jail are a major contributor to the state's current incarceration crisis. Probation revocations account for approximately 1/3 of state prison intakes annually – filling 23,202 prison beds last year.<sup>1</sup>

Of those who were revoked, more than half (12,440) were revoked for technical violations, which are the result of a probationer's failure to comply with the terms of supervision set by a judge and include the following:

- failure to report to meetings with probation officers;
- failure to pay fees;
- submitting a positive urinalysis;
- absconding (avoiding supervision);
- non-participation in treatment;
- failure to complete community service or restitution requirements; and
- contact with the victim.<sup>2</sup>

Unlike revocations for a new offense, these violations are not crimes in themselves but nonetheless result in the probationer being incarcerated.

Oftentimes these violations are directly related to offenders' treatment and assistance needs going unfulfilled. According to a recent LBB survey, 84.5% of surveyed probationers reported financial management needs, 67.4% reported drug usage problem needs, and 60% reported employment needs.<sup>2</sup>

**TEXAS SHOULD ELIMINATE REVOCATIONS FOR PROBATIONERS WHO COMMIT MINOR, TECHNICAL VIOLATIONS.**

Revocations to prison should be limited to individuals who either commit new crimes or intentionally affront the authority of the state, not those who unintentionally commit minor infractions. Applying this punishment to unintentional violators would have neither the intended effect of deterrence (since the violator had no control over the violation) nor an increase in public safety (since the violator did not commit a new crime, and would not have committed the violation were it within his ability to control).

As an alternative disciplinary strategy, judges and probation officers should impose proportionate and progressive penalties that match the severity and frequency of the violation. These may include terms in intermediate sanction facilities, additional fines, community service, and other non-incarceration-related penalties.

Sanctions that are immediately administered and proportionate to the violation provide more immediate and productive feedback to individuals who break the rules, prompting them to comply with the terms of supervision earlier, more often, and with greater awareness.

**H.B. 337 BY REP. TURNER WOULD REDUCE PRISON OVERCROWDING WHILE PROTECTING THE AUTHORITY OF JUDGES.**

Under H.B. 337 by Rep. Turner, a court would be required to find that a probationer's technical violation was willful or intentional before revoking him or her.

This initiative represents a balance of two state interests: first, it would reduce the number of probationers revoked to prison (and who are contributing to the State's prison overcrowding crisis) by imposing a higher standard for revocation; second, it would still allow the court to punish offenders – either through the use of more pertinent and immediate sanctions for those who commit technical violations, or through the penalty of revocation for those who intentionally affront the authority of the system.

For example, H.B. 337 would permit a judge to send a probationer who submitted a positive urinary analysis to a treatment program rather than prison, which would have a positive impact on the probationer's problem with addiction and subsequently on his or her propensity to commit a drug-related offense. On the other hand, by allowing revocations in cases of willful or intentional violation, H.B. 337 would permit the court to enforce the authority of the probation system.

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<sup>1</sup> Fabelo, Tony. *Justice Reinvestment: A Framework to Improve Effectiveness of Justice Policies in Texas*. Presentation to 80<sup>th</sup> Texas Legislature, January 2007. <http://justicecenter.csg.org/downloads/FinalJointComm13007.pdf>

<sup>2</sup> Legislative Budget Board. *Texas Community Supervision Revocation Project: A Profile of Revoked Felons During September 2005*. September 2006.