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FACT SHEET

## **ELIMINATE TECHNICAL REVOCATIONS FOR PROBATION**

**COURTS SHOULD PROVE THAT A PROBATIONER INTENDED TO VIOLATE PROBATION CONDITIONS IN ORDER TO REVOKE TO PRISON AND SHOULD IMPLEMENT PROPORTIONAL PENALTIES FOR PROBATION VIOLATORS**

### **TECHNICAL REVOCATIONS ARE A HUGE SOURCE OF NEW PRISON INTAKES.**

Probation revocations account for approximately 1/3 of state prison intakes annually. Of these, more than half (55%) are the result of technical revocations.

### **THESE VIOLATIONS DO NOT INVOLVE WRONGDOING OR PUBLIC SAFETY ENDANGERMENT.**

Technical revocations are the result of probationers' noncompliance with the conditions of their supervision; they are NOT new crimes. Technical violations include such things as failure to pay fines, tardiness to probation officer meetings, and failure to participate in a court-ordered treatment program.

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

Revokees to prison should include individuals who repeatedly and intentionally affront the authority of the state, not those who unintentionally commit minor infractions.

Courts should impose proportionate penalties on probation violators that match the severity of the violation. These penalties may include terms in intermediate sanction facilities, additional fines, community service, or other non-incarceration penalties. Sanctions that are immediately administered and proportionate to the offense provide more immediate and productive feedback to violators and encourage them to comply with terms earlier and more directly.

### **UNDER H.B. 337 BY REP. TURNER, A COURT WOULD BE REQUIRED TO PROVE THAT A PROBATION VIOLATION WAS WILLFUL OR INTENTIONAL BEFORE REVOKING A PROBATIONER FOR A TECHNICAL VIOLATION.**

H.B. 337 aligns the statute with the requirements of the Due Process Clause as interpreted by the United States Supreme Court in *Bearden v. Georgia*. In this opinion, the Court stated that "intentional" means that the non-payment must reflect an unwillingness – not an inability – of the probationer to make efforts to pay. More recently, the Texas Court of Criminal Appeals noted that Texas law "may be constitutionally questionable" in light of *Bearden v. Georgia*. H.B. 337 will ensure that a probationers inability to comply with probation conditions due to constraints beyond the probationer's control do not result in the costly and extraordinary sanction of prison.

Although proving a violation of a technical condition of community supervision was willful or intentional would remain based on a preponderance of evidence under H.B. 337, the state would bear the burden of proof. *Note: This bill also states that a defendant's violation of a condition of community supervision would be presumed to be willful if the violation were the defendant's commission of a subsequent offense.*