

SUBJECT: Eliminating state jail felony and reclassifying offenses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Collier, Cason, Crockett, Hinojosa, A. Johnson

4 nays — K. Bell, Cook, Murr, Vasut

WITNESSES: For — Lauren Johnson, ACLU of Texas; Sable Thornton, Cannabis Reform of Houston; LaTonya Whittington, Cannabis Reform of Houston; Sarah Reyes, Texas Criminal Justice Coalition; David Bass; (*Registered, but did not testify*: Dustin Cox, GRAV; Kathy Mitchell, Just Liberty; Susybelle Gosslee, League of Women Voters Texas; Amanda List, Texas Appleseed; Sarah Moseley, Texas Cannabis Collective; Shea Place, Texas Criminal Defense Lawyers Association; Emily Gerrick, Texas Fair Defense Project; Jaclyn Finkel, Texas NORML; Phillip Ochoa)

Against — Elmer Beckworth, District Attorney Cherokee County; Jimmy Perdue, Texas Police Chiefs Association; (*Registered, but did not testify*: Frederick Frazier, Dallas Police Association/State FOP; James Parnell, Dallas Police Association; Ray Hunt, Houston Police Officers' Union; Brian Hawthorne, Sheriffs' Association of Texas; Lindy Borchardt, for Tarrant County Criminal District Attorney; John Wilkerson, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association)

On — (*Registered, but did not testify*: David Gutierrez, Texas Board of Pardons and Paroles)

BACKGROUND: Under Penal Code sec. 12.04 felonies are classified according to the relative seriousness of the offense, with state jail felonies being the lowest level.

State jail felonies carry a punishment of 180 days to two years in a state jail and an optional fine of up to \$10,000. Class A misdemeanors can result in a punishment of up to one year in jail and/or a maximum fine of

\$4,000.

Concerns have been raised that the current state jail system, created in 1993, has not worked well as a method of diversion and treatment for those committing criminal offenses.

DIGEST:

HB 1086 would eliminate state jail felony punishments for criminal offenses, create a fourth degree felony punishment, and reclassify state jail felonies. The bill also would eliminate provisions relating to the state jail division of the Texas Department of Criminal Justice (TDCJ) and revise penalties for some offenses, including some drug offenses.

Eliminating state jail felony system. HB 1086 would eliminate state jail felony punishments (180 days to two years in a state jail and an optional fine of up to \$10,000) and create a new fourth degree felony punishment, which would have the same punishment as current state jail felonies. Current state jail punishments for various offenses would be reclassified, generally as class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000) or fourth degree felonies. The bill also would establish provisions for enhanced penalties related to state jail felonies.

HB 1086 would repeal provisions that establish the state jail division of the Texas Department of Criminal Justice and state jail felony facilities. TDCJ would be authorized to use former state jail felony facilities for any purpose it deemed appropriate, including to confine those serving sentences for fourth degree felonies.

Health and Safety Code offenses. The bill would amend Health and Safety Code provisions governing some drug offenses. It would reclassify certain drug offenses that currently are state jail felonies to be class A misdemeanors, including:

- possession of less than one gram of a substance in Penalty Group 1;
- possession of fewer than 20 units of a substance in Penalty Group 1-A;
- possession of less than one gram of a substance in Penalty Group 2;

- possession of more than four ounces but less than 5 pounds of substances in Penalty Group 2-A; and
- possession of more than four ounces but less than 5 pounds of marijuana.

The bill also would revise some punishments relating to smaller amounts of marijuana. The penalty for possessing more than two ounces of marijuana but less than four would be reduced from a class A to a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). After the revision, possession of four ounces or less would be a class B misdemeanor.

The bill also would decrease from a class A misdemeanor to a class B misdemeanor the penalty for possession of substances in Penalty Group 2-A of four ounces or less.

The state jail felonies relating to possessing a prescription for a controlled substance or a prescription form would be reclassified as class A misdemeanors.

Parks and Wildlife offenses. The bill would reclassify Parks and Wildlife Code state jail felonies to be Parks and Wildlife fourth degree felonies.

The bill would decrease the current Parks and Wildlife state jail felony for certain repeat offenses involving taking oysters from restricted areas to a class A misdemeanor.

Other provisions. The bill would decrease the punishment for certain other offenses from a state jail felony to a class A misdemeanor, including: obscenity; organized retail theft of merchandise valued between \$2,500 and \$3,000; certain theft offenses; and making a false statement to obtain property or credit of a certain value.

The bill also would revise certain punishments relating to prostitution. It would decrease the penalty enhancement from a state jail felony to a class

A misdemeanor and make it apply to all offenses after one conviction.

The bill would decrease the penalty for harassment by persons in certain facilities and harassment of a public servant from a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to a class A misdemeanor.

HB 1086 would repeal numerous provisions in the Code of Criminal Procedure and the Government Code relating to state jail felonies.

The bill would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, HB 1086 would have a positive impact of \$35.9 million through the fiscal 2022-23 biennium.