

## BILL ANALYSIS

C.S.H.B. 2668  
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Corrections  
Committee Report (Substituted)

### BACKGROUND AND PURPOSE

According to estimates from the Criminal Justice Policy Council (CJPC), there were approximately 9,130 state jail admissions in fiscal year 2002 for possession of a controlled substance of less than one (1) gram. Of the 9,130 state jail admissions, 4,040 state jail admissions had no other charges/sentences and had no prior Texas Department of Criminal Justice (TDCJ) sentences.

CSHB 2668 establishes a model of progressive sanctions for drug offenders convicted of certain state jail felony offenses involving possession of small amounts of certain controlled substances and requires treatment for those offenders. The CJPC estimates that implementation of CSHB 2668 would reduce the projected backlog in county jails for inmate bed space, producing a future cost avoidance of \$146.9 million (between FY 2004-2008), or roughly saving the state \$36.6 million per year by August 2008.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### ANALYSIS

CSHB 2668 establishes a model of progressive sanctions for drug offenders convicted of certain state jail felony offenses involving possession of small amounts of certain controlled substances and requires treatment for those offenders.

CSHB 2668 targets the following offenses for possession of drugs under the Texas Health and Safety Code: §481.115(b) Possession of less than a gram, Penalty Group 1 (Cocaine, Heroin, Methamphetamine, etc.); §481.1151 (b)(1) Possession of fewer than 20 units, Penalty Group 1-A (LSD); §481.116 (b) Possession of less than a gram, Penalty Group 2 (Mushrooms, Amphetamines, hallucinogens, etc.); or §481.129 (g)(1) Fraudulent Possession of a Prescription.

CSHB 2668 prescribes the penalties and sanctions for these offenses as follows:

- 1st Offense: **Community supervision**, or if not successful, confinement in state jail for 90-180 days. There is no automatic community supervision available if the offender has a prior felony conviction, except that a judge still may, using his or her discretion, impose community supervision and treatment. The term of community supervision is for 3 years. The charge shall be set aside upon successful completion of community supervision.
- 2nd Offense: **Confinement in state jail** for 180 days to one year. There is no automatic community supervision available. However, a judge still may impose community supervision and further treatment. The offense may be set aside at the discretion of the court, upon successful completion of community supervision.

- 3rd Offense: **Confinement in state jail** for 180 days to two years. There is no automatic community supervision available. However, a judge still may impose community supervision and further treatment. The offense may be set aside at the discretion of the court, upon successful completion of community supervision.

These offenses are a third degree felony if the person used or exhibited a deadly weapon or has a previous conviction or finding under the Texas Code of Criminal Procedure, Art. 42.12 §3g (a) (1) or (2).

As an intermediate sanction, if a person violates a condition of community supervision for one of the above offenses, a judge can send the person to state jail for 45-90 days. In such a case, the director of the state jail facility must report the person's progress and compliance to the judge within 45 days.

A judge who places a person on community supervision for the above offenses must require specific substance abuse treatment unless the judge specifically finds that the person does not need treatment.

If the judge sets aside or dismisses one of the above offenses upon successful completion of community supervision, the state jail felony charge or conviction may still be made known to a future criminal court judge and prosecutor.

A judge may suspend any fine imposed for the above offenses.

#### **EFFECTIVE DATE**

September 1, 2003

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute modifies the original by removing the provisions which changed possession of 1 gram or less of a controlled substance in Penalty Group 1 and 2 from a state jail felony to a Class A Misdemeanor with Mandatory Intensive Narcotics Supervision or Confinement. The substitute also modifies the original by removing the provisions which added a judge of a drug court or the judge's designee to the list of persons who should compose the community justice council. CSHB 2668 modifies the original bill by removing the provisions which directed the community justice assistance division of the TDCJ to give priority, when making discretionary grants, to counties and community supervision and corrections departments that operate a drug court program. The substitute further modifies the original by removing the provision which required the commissioners court to cooperate with the community supervision and corrections department serving the county in establishing and maintaining a drug court program and by removing the provision which defined Intensive Narcotics Supervision or Confinement.

CSHB 2668 adds new SECTIONS 1, 2, 3, 4, and 5 to establish a model of progressive sanctions for drug offenders convicted of certain state jail felony offenses involving possession of small amounts of certain controlled substances and requires treatment for those offenders.