

BILL ANALYSIS

H.B. 1086
By: Moody
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It has been suggested that the state jail felony system, both as a category of offense and as a type of facility within the Texas Department of Criminal Justice (TDCJ), has failed to serve the purposes for which it was created. H.B. 1086 seeks to address this issue by eliminating the state jail felony system, reclassifying most offenses currently punishable as state jail felonies as Class A misdemeanors and others as a new offense category of fourth degree felony, and authorizing TDCJ to use former state jail felony facilities for any purpose it determines appropriate.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

H.B. 1086 repeals Government Code provisions establishing the state jail division of the Texas Department of Criminal Justice (TDCJ) and providing for the division's authority to operate, manage, and contract for state jail felony facilities. The bill repeals Code of Criminal Procedure provisions relating to state jail felony community supervision.

H.B. 1086 amends the Penal Code to reclassify a state jail felony as a fourth degree felony and establishes that "state jail felony" means a fourth degree felony for purposes of state law. The bill establishes that, for purposes of enhancing a penalty under state law, a person is considered to have been previously convicted of a fourth degree felony if the person has a final conviction for a state jail felony and that a person is considered to have previously received a dismissal and discharge on the expiration of a period of deferred adjudication community supervision for a fourth degree felony if the person received such dismissal and discharge for a state jail felony. The bill maintains the state jail felony level punishment for a fourth degree felony but provides for the imprisonment of an individual adjudged guilty of a fourth degree felony in TDCJ.

H.B. 1086 decreases the penalty for harassment by persons in certain facilities and harassment of a public servant from a third degree felony to a Class A misdemeanor.

H.B. 1086 decreases the penalty for the following offenses from a state jail felony to a Class A misdemeanor:

- theft in which the value of the property stolen is less than \$750 and the defendant has been previously convicted two or more times of any grade of theft;
- organized retail theft in which the total value of merchandise involved in the activity is

- \$2,500 or more but less than \$30,000;
- false statement to obtain property or credit or in the provision of certain services in which the value of the property or the amount of credit is \$2,500 or more but less than \$30,000; and
- obscenity.

H.B. 1086 decreases from a state jail felony to a Class A misdemeanor the penalty enhancement for a subsequent conviction of prostitution and makes the enhancement applicable after one previous conviction.

H.B. 1086 amends the Government Code to authorize TDCJ to use a former state jail felony facility for any purpose TDCJ determines appropriate, including the confinement of inmates serving a sentence for a fourth degree felony.

H.B. 1086 amends the Health and Safety Code to decrease from a state jail felony to a Class A misdemeanor the penalty for:

- possession of a controlled substance in Penalty Group 1 of the Texas Controlled Substances Act in an amount less than one gram;
- possession of fewer than 20 abuse units of a controlled substance in Penalty Group 1-A of the act;
- possession of a controlled substance in Penalty Group 2 of the act in an amount less than one gram;
- possession of a controlled substance in Penalty Group 2-A of the act in an amount five pounds or less but more than four ounces; and
- possession of marihuana in which the amount of marihuana possessed is five pounds or less but more than four ounces.

H.B. 1086 decreases from a Class A misdemeanor to a Class B misdemeanor the penalty for possession of four ounces or less of a controlled substance in Penalty Group 2-A of the act or of marihuana.

H.B. 1086 decreases from a state jail felony to a Class A misdemeanor the penalty for conduct constituting fraud under the act in which the defendant knowingly or intentionally possesses a prescription form or a prescription for a controlled substance listed in Schedule II or III.

H.B. 1086 amends the Parks and Wildlife Code to reclassify a Parks and Wildlife Code state jail felony as a Parks and Wildlife Code fourth degree felony. The bill maintains the Parks and Wildlife Code state jail felony level punishment for a Parks and Wildlife Code fourth degree felony but provides for the imprisonment of an individual adjudged guilty of a Parks and Wildlife Code fourth degree felony in TDCJ. The bill establishes that, for purposes of the Parks and Wildlife Code, "Parks and Wildlife Code state jail felony" means a Parks and Wildlife Code fourth degree felony.

H.B. 1086 decreases from a Parks and Wildlife Code state jail felony to a Class A Parks and Wildlife Code misdemeanor the penalty for a subsequent offense within five years for taking oysters from restricted areas.

H.B. 1086 amends the Business & Commerce Code, the Civil Practice and Remedies Code, the Code of Criminal Procedure, the Labor Code, and the Local Government Code to make conforming changes.

H.B. 1086 repeals the following provisions of the Code of Criminal Procedure:

- Article 42.0199;
- Article 42A.104(b);
- Article 42A.515(b), Code of Criminal Procedure, as added by Chapter 413 (S.B. 20), Acts of the 86th Legislature, Regular Session, 2019; and

- Subchapter L, Chapter 42A.

H.B. 1086 repeals the following provisions of the Government Code:

- Section 491.001(a)(8);
- Section 493.0051;
- Section 497.097;
- Section 499.151(b);
- Sections 509.006(d) and (e);
- Section 509.017;
- Section 511.017; and
- Chapter 507.

EFFECTIVE DATE

September 1, 2021.