



**WRITTEN TESTIMONY**

**SUBMITTED BY ANA YÁÑEZ-CORREA, EXECUTIVE DIRECTOR  
TEXAS CRIMINAL JUSTICE COALITION**

**REGARDING HOUSE BILL 312**

**SENATE COMMITTEE ON CRIMINAL JUSTICE**

**MAY 8, 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 312.

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.

**H.B. 312 BY REP. TURNER WOULD UNTIE JUDGES' HANDS TO ENSURE THAT JUSTICE IS SERVED.**

Under existing law, in a proceeding to revoke community supervision where the grounds for revocation are the probationer's failure to pay fees, the inability of the probationer to pay the fees is an affirmative defense. As such, a probationer must prove his inability to pay by a preponderance of the evidence. Once the issue of inability to pay has been raised, the burden of proof shifts to the State to prove that the defendant's failure to pay was intentional.

H.B. 312 would remove the intermediary step by which a defendant had to show his inability to pay by a preponderance of the evidence before the burden shifted on the State to prove that the failure to pay was intentional.

**FEE NON-PAYMENT IS A MAJOR CONTRIBUTOR TO TECHNICAL REVOCATIONS.**

Offenders released to community supervision are required to pay monthly fees to probation departments for the duration of their supervision; failure to pay these fees can constitute a violation of probation terms and contribute to a motion to revoke. Of the probationers revoked solely for technical violations, 69% had failed to pay fees at some point during their supervision.

**FEE NON-PAYMENT IS AN INDICATOR OF NEED, NOT DEVIANCE.**

An LBB examination of the "needs profiles" of probationers revealed that financial management problems were a prevalent issue, present in 84.5% of revoked probationers.<sup>1</sup> Furthermore, criminal records – which can prevent ex-felons from obtaining gainful employment – further reduces their likelihood of paying fees; in fact, over 58% of revoked probationers were unemployed at the time of their revocation.

**REVOKING NON-PAYERS ACTUALLY COSTS THE STATE MUCH MORE THAN SIMPLY IGNORING DEBTS.**

Nearly half of revoked probationers return to state prison and serve an average of 51 months. At a cost of \$44 per day, this amounts to a cost of \$68,255 to taxpayers for each revoked probationer. Considering that the average amount owed by these probationers is \$3,700, these revocations make no fiscal sense.

**TEXAS SHOULD DISALLOW UNINTENTIONAL FEE NON-PAYMENT AS A CONTRIBUTOR TO TECHNICAL REVOCATION.**

Revoking individuals who cannot pay their fees due to circumstances beyond their control undermines the authority of the system and reduces incentives to comply. It also burdens the families of the offenders, who may depend on them for financial and other support.

As such, when probationers have a known problem with financial management, probation officers should work with them to find gainful employment and correct their spending habits instead of revoking them to prison for a non-crime.

**H.B. 312 WILL NOT IMPOSE AN UNDUE BURDEN ON THE STATE IN REVOCATION HEARINGS.**

When Texas judges consider whether an individual is entitled to a court-appointed attorney, they make determinations concerning defendants' ability to pay. Given that tools for making such judgments already exist, requiring the State to prove an individual's ability to pay fees by a preponderance of evidence will not constitute an undue burden. In addition, any financial costs incurred by the State in running such an investigation would pale in comparison to the cost of incarcerating a revoked probationer.

Revoking individuals for merely not paying fees ignores the root causes of noncompliance: indigent people do not have the necessary resources to demonstrate their inability to pay. Thus, until all CSCDs adopt a system of progressive sanctions that can prevent high rates of revocation to prison, it is important that courts make strong cases for revoking probation while also accurately documenting the reasons behind these revocations.

We believe that Rep. Turner's other bill concerning probation revocations, H.B. 337, would be an even stronger measure for preventing unnecessary revocations to prison.

I appreciate the opportunity to testify before this committee, and to offer our organization's ideas about this important issue. I would also like to commend Rep. Turner for his efforts to address prison and jail overcrowding, a problem with the potential to erode public safety and exact tremendous social and economic costs. We hope that this committee will approve his bill.

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<sup>1</sup> Legislative Budget Board. *Texas Community Supervision Revocation Project: A Profile of Revoked Felons During September 2005*. September 2006.