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January 8, 2018

Hon. Nico LaHood
Bexar County District Attorney
101 West Nueva Street
San Antonio, Texas 78205

Dear Mr. LaHood:

There are several people still suffering adverse consequences (incarceration, criminal records or sex-offender registration) resulting from prosecutions in Bexar County for the unconstitutional section 33.021(b) of the Texas Penal Code. Some may be suffering consequences for other offenses concurrently (so that the harm in continuing to punish them for 33.021(b) is arguably small), but these ten appear to me to be suffering consequences due *only* to the void statute:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]

Mr. [REDACTED] and Ms. [REDACTED] are, it appears, still in prison.

Last Friday in Tarrant County I got a man out of prison, where he had been sitting since before the statute was held unconstitutional. It is troubling to think that there are others.

I have sent letters offering my services to these ten, and they have not responded. You now hold the key to correcting this injustice. Article 11.074 of the Texas Code of Criminal Procedure provides:

If at any time the state represents to the convicting court that an eligible indigent defendant under Article 1.051 who was sentenced or had a sentence suspended is not guilty, is guilty of only a lesser offense, or was convicted or sentenced under a law that has been found unconstitutional by the court of criminal appeals or the United States Supreme Court, the court shall appoint an attorney to represent the indigent defendant for purposes of filing an application for a writ of habeas corpus, if an application has not been filed, or to otherwise represent the indigent defendant in a proceeding based on the application for the writ.

Please ask the convicting courts to appoint counsel to these ten and everyone else successfully prosecuted under the pre-September 1, 2015 section 33.021(b).

Thank you,

Mark W. Bennett