

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 4, 2005**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: SB1266** by Whitmire (Relating to the administration of a system of community supervision for certain defendants convicted of criminal offenses and to the suspension of driver's licenses for defendants convicted of certain offenses.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB1266, Committee Report 1st House, Substituted: a positive impact of \$48,935,742 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$14,112,841
2007	\$34,822,901
2008	\$29,003,536
2009	\$28,163,347
2010	\$25,509,726

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings from <i>GENERAL REVENUE FUND</i> 1	Probable Revenue Gain from <i>GENERAL REVENUE FUND</i> 1
2006	\$11,859,403	\$2,253,438
2007	\$32,569,463	\$2,253,438
2008	\$26,750,098	\$2,253,438
2009	\$25,909,909	\$2,253,438
2010	\$23,256,288	\$2,253,438

**Fiscal Analysis**

The bill would amend sections of the Code of Criminal Procedure relating to the maximum period of community supervision, dismissal and discharge of defendants prior to the expiration of a term of deferred adjudication or community supervision, a continuum of care treatment plan for offenders released from a substance abuse felony program, credit toward time required to be served in a state jail facility, the requirements concerning termination of community supervision and grounds for termination of community supervision, and the ability of a judge to grant a defendant credit for time spent on community supervision if the judge revokes community supervision for an administrative violation. The bill would also repeal provisions of the Code of Criminal Procedure related to community supervision for driving while intoxicated (DWI) offenders and allow judges to determine

conditions of community supervision and the duration of community supervision for DWI offenders. The bill would also require automatic driver license suspensions for probated DWI convictions and a \$100 reinstatement fee.

## **Methodology**

The maximum period of community supervision for certain violent offenders (Section 3g of the Code of Criminal Procedure) would continue to be 10 years. For other felony offenders of the first, second or third degree, the bill would lower the maximum period of community supervision from ten years to five years for judge-ordered community supervision and deferred adjudication. The bill would lower the maximum period of community supervision for persons convicted of state jail felonies from five years to three years, except that the judge may extend the maximum period of community supervision to not more than five years. Under current law the judge can extend the maximum period of community supervision for state jail felons to ten years. Because the bill would apply to all persons on community supervision on or after the effective date of the bill, the impact would be substantial in fiscal years 2006 and 2007 due to the significant number of persons on community supervision who have served more than the maximum community supervision terms proposed by the bill (5 years for felonies and 3 years for state jail felonies). For the purposes of this analysis, it is assumed that persons who have served more than the proposed maximum terms and are eligible for release under the bill would be distributed throughout fiscal year 2006, rather than all released at the beginning of the fiscal year.

In order to estimate the future impact of the proposal, the changes proposed for admission and release policies are applied in simulation models, to estimate the decrease in the number of people on community supervision resulting from the proposed reduction in maximum periods of community supervision, and decreased prison admissions from fewer probation revocations.

Costs of incarceration by the Texas Department of Criminal Justice are estimated on the basis of \$40 per inmate per day for prison facilities, reflecting approximate costs of either operating prison facilities or contracting with other entities. After five years of cumulative impact, fiscal implications will continue as long as the provisions of the bill are implemented.

Additionally, the bill would require automatic driver license suspensions and a \$100 reinstatement fee for DWI offenders. The Department of Public Safety (DPS) estimates that during fiscal year 2004 there were 34,143 probated DWI convictions. By applying a 66 percent compliance rate, DPS estimates that 22,534 offenders will pay the reinstatement fee annually and provide a revenue gain for each year of \$2,253,438.

The provision of the bill requiring judges to review a defendant's case for termination of community supervision as soon as practicable after a defendant has completed one-half of the community supervision period or two years, whichever is greater, could result in further savings depending on the extent to which the provision would be applied by judges; however, it is not included in this analysis. The bill would also allow a judge to reduce or early terminate the community supervision sentence of an offender, regardless of the offense committed, which could further add to savings depending on the extent to which the provision would be applied. Savings from this provision are also not included in this analysis.

The bill would amend the Code of Criminal Procedure to require the Department of Public Safety (DPS) and the Office of Court Administration (OCA) to develop a form to track the filing of charges against persons charged with offenses under Chapter 49, Penal Code. DPS would be required to make the forms and filing instructions available to district and county clerks. It is assumed that any work resulting from this provision could be reasonably absorbed with current resources.

According to the Texas Department of Transportation, the provisions of the bill dealing with repeat driving while intoxicated (DWI) offenders would take Texas out of compliance with the federal requirements for repeat DWI offenders and could result in the need for a federal-aid highway fund transfer. If the federal government rules that Texas is no longer compliant, the Texas Department of Transportation estimates that the state would have to transfer approximately \$59.8 million from the three federal construction categories into either of two other programs. This transfer would continue

annually until the state law is in compliance with federal requirements. Texas would not lose transferred funds, but the ability to spend these funds on congestion and mobility projects as originally planned would be lost.

### **Local Government Impact**

Under existing statute, in addition to funding received from the state for each felony offender on direct community supervision, the court may impose a supervision fee on the offender to help offset the costs of their supervision. Collection of the supervision fee and other fees imposed on offenders may be spread over the length of their community supervision; a shorter period of supervision could reduce the collection rate. However, if the majority of felony community supervision cases are not extended beyond the proposed maximum terms, there would be a reduction in the number of felony offenders under supervision, which would result in reduced workload and costs to a community supervision and corrections department (CSCD).

While the fiscal impact would vary by CSCD, the statewide loss in revenue to CSCDs through state funding would be equivalent to the savings to the state as indicated in the table above.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 537 Department of State Health Services, 601 Department of Transportation, 696 Department of Criminal Justice

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