

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

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 11, 2007**

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

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

**IN RE: HB1678** by Madden (Relating to the operation of a system of community supervision.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1678, As Engrossed: a negative impact of (\$646,477) through the biennium ending August 31, 2009.

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

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2008	(\$165,378)
2009	(\$481,099)
2010	(\$27,325)
2011	\$12,429,545
2012	\$29,619,915

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

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from GENERAL REVENUE FUND 1</b>
2008	(\$165,378)
2009	(\$481,099)
2010	(\$27,325)
2011	\$12,429,545
2012	\$29,619,915

**Fiscal Analysis**

The bill would amend the Code of Criminal Procedure to provide that in all criminal cases, the judge shall give the defendant credit on the defendant's sentence for the time that the defendant has spent in jail or in a substance abuse treatment facility operated by the Texas Department of Criminal Justice (TDCJ), or another court-ordered residential program or facility, as a condition of deferred adjudication community supervision granted in the case if the defendant successfully completes the treatment program at that facility.

The bill would amend the Code of Criminal Procedure by limiting the maximum term of community supervision to 5 years for third degree felony offenses against property (Title 7 of the Penal Code), third degree felony drug offenses (Chapter 481, Health and Safety Code).

The bill would amend the Code of Criminal Procedure by eliminating the possibility of jury recommended community supervision for a defendant convicted of the offense of murder.

The bill would amend the Code of Criminal Procedure by providing that if a defendant is required to serve in a state jail felony facility, the judge is required to give the defendant credit for any time that the defendant spent

in a substance abuse treatment facility operated by TDCJ, or another court-ordered residential program or facility, as a condition of deferred adjudication community supervision before sentencing, but only if the defendant successfully completes the treatment program in that facility. The judge shall also credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of probation, any time served by the defendant in a substance abuse treatment facility operated by the TDCJ if the defendant successfully completes the treatment program in that facility.

The bill would amend the Code of Criminal Procedure by providing that the judge “may” rather than “shall” require community service as a condition of community supervision.

The bill would amend the Code of Criminal Procedure by requiring a judge to review a defendant’s record and consider whether to reduce or terminate the period of probation upon completion of one-half of the original community supervision period, or two years of community supervision, whichever is more. Additionally, the judge is not required to review a defendant’s record if the defendant has not paid restitution, fines, costs or fees that the defendant has the ability to pay or the defendant has not completed court ordered counseling or treatment. If it is determined that the defendant has failed to fulfill the conditions, the judge shall advise the defendant in writing of the requirements for satisfactorily fulfilling those conditions. Additionally, this mandatory judicial review does not apply to a defendant convicted of certain aggravated violent felonies (described by Section 3g, Article 42.12, Code of Criminal Procedure), various intoxication offenses, and for offenders required to register as sex offenders.

The bill would amend the Code of Criminal Procedure by allowing a judge to extend a period of community supervision on a showing of good cause.

The bill would also provide that upon revocation of community supervision, the judge shall credit the defendant time served as a condition of community supervision in a substance abuse treatment facility operated by TDCJ, but only if the defendant successfully completes the treatment program in that facility.

The bill would also amend the Local Government Code by allowing the director of a community supervision and corrections department, with the approval of the judges to authorize a community supervision official who collects fees, fines, court costs, and other charges to accept payment by debit card or credit card, and collect a fee for processing the payment by debit or credit card.

The change in law made by this bill would apply only to a defendant initially placed on community supervision on or after September 1, 2007.

## **Methodology**

The provisions of the bill that are expected to result in savings to the state and are the provision requiring a judge to review a defendant’s record and consider whether to reduce or terminate the period of probation upon completion of one-half of the original community supervision period, or two years of community supervision, whichever is more; and the provision limiting the maximum term of community supervision to 5 years for third degree felony offenses against property (Title 7 of the Penal Code), and third degree felony drug offenses (Chapter 481, Health and Safety Code).

For fiscal year 2006, 34 community supervision placements were convicted of the offense of murder. It is assumed that the provision of the bill that eliminates the possibility of jury recommended community supervision for persons convicted of the offense of murder would shift 21 of the 34 community supervision placements from community supervision to prison.

In order to estimate the future impact of the bill, 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, the termination of supervision provision, and decreased prison admissions due to fewer probation revocations. The simulation model also accounts for the shift in defendants convicted of the offense of murder from community supervision placement to prison.

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. Given the bill would apply only to a defendant initially placed on community supervision on or after September 1, 2007, cost savings from reduced community supervision populations is estimated to occur beginning in fiscal year 2010. After five years of cumulative impact, fiscal implications will continue as long as the provisions of the bill are implemented.

## **Local Government Impact**

Local governments would experience a decrease in revenue through lowered court costs and lowered probation fees to community supervision and corrections departments. The impact to individual localities would vary considerably due to court costs, probation fees, and supervision costs which vary by locality.

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.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 696 Department of Criminal Justice

**LBB Staff:** JOB, ES, KJG, GG, DB, JJO