

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 10, 2007

**TO:** Honorable Jerry Madden, Chair, House Committee on Corrections

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

**IN RE: SB1909** by Ellis (Relating to community supervision for certain drug possession offenses and to a person's eligibility for an order of nondisclosure following a term of community supervision for any of those offenses. ), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB1909, Committee Report 2nd House, Substituted: a positive impact of \$108,066,113 through the biennium ending August 31, 2009.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$23,622,219
2009	\$84,443,894
2010	\$110,733,363
2011	\$122,971,134
2012	\$132,396,577

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from GENERAL REVENUE FUND 1
2008	\$23,622,219
2009	\$84,443,894
2010	\$110,733,363
2011	\$122,971,134
2012	\$132,396,577

Fiscal Analysis

The bill would amend the Code of Criminal Procedure by requiring a judge to suspend the imposition of a sentence and place a defendant on community supervision for a drug possession offense if the offense is punishable as a felony of the third degree or any lower category of offense. The bill would also specify conditions in which the judge would not be required to suspend the sentence and place a defendant on community supervision. A court granting community supervision as a result of the bill would require as a condition of community supervision that the defendant submit to an evidence-based risks and needs screening and evaluation procedure and, based on the evaluation, participate in a prescribed course of treatment in a program or facility and pay a fee to cover all or part of the cost of the program based on the defendant's ability to pay. The bill would specify revocation conditions for a defendant's violation of the terms of community supervision relating to the revocation of supervision. Prior versions of the bill placed limitations on the ability of a parole panel to revoke the parole or mandatory supervision of a releasee based on the commission of a drug possession offense revocation; however, such limitations are not included in this version of the bill.

The defendant would be required to pay a fee to cover all or part of the cost of the program based on the defendant's ability to pay.

The bill would also require the Texas Department of Criminal Justice (TDCJ) to study and report to the Legislature on the effectiveness and financial impact to the state of the bill.

The bill would take effect September 1, 2007.

## **Methodology**

For fiscal year 2006, 12,612 admissions to prison and state jail were for drug possession offenses punishable as a felony of the third degree or lower. The bill specifies a number of conditions in which the judge would not be required to suspend the sentence and place a defendant on community supervision. Based on fiscal year 2006 admissions data, 39% of state jail and third degree felony drug possession admissions had previously been convicted of a felony offense, therefore to approximate the conditions that would exclude the application of the bill, it was assumed that approximately 60% of the 12,612 admissions would be placed on community supervision rather than being admitted to prison or state jail. The 60% also accounts for the latest version of the bill by not placing limitations on the ability of a parole panel to revoke the parole or mandatory supervision of a releasee based on the commission of a drug possession offense; and the exclusion of the offense of possession of a substance in Penalty Group 1-A (punishable as a felony of the third degree) from required community supervision.

In order to estimate the future impact of the proposal, the changes proposed for admission policy are applied in a simulation model, to (1) state jail admissions that reflect the distribution of offenses, sentence lengths, and time served, (2) prison admissions that reflect the distribution of offenses, sentence lengths, and time served. The analysis also includes an increased felony community supervision population reflecting the provision of the bill that requires suspension of the sentence and placement on community supervision.

Incarceration savings by the Department of Criminal Justice are estimated on the basis of \$36.53 per state jail inmate per day for state jail facilities, and \$40 per prison inmate per day reflecting approximate costs of either operating facilities or contracting with other entities. The bill also specifies that a court granting community supervision shall require as a condition of community supervision that the defendant participate in a drug treatment program licensed or approved by the Department of State Health Services. Defendants would be required to pay a fee to cover all or part of the cost of the program based on the defendant's ability to pay. For this analysis it is assumed that half of the defendants would be able to pay for drug treatment and the state would pay the daily rate of \$3.64 reflecting the cost of non-residential treatment alternatives to incarceration program for the probationers unable to pay their drug treatment program fees. Also included in the costs is the daily community supervision cost of \$1.19 per day for the increased community supervision population as a result of the bill.

The Texas Department of Criminal Justice indicated no significant cost for preparing a study and report to the Legislature on the effectiveness and financial impact to the state of the bill.

## **Local Government Impact**

Since the bill would result in increased community supervision populations, local government would be responsible for part of the supervision cost and potentially part of the treatment cost of defendants that would under current law be incarcerated in prison and state jails. Fees paid by defendants on community supervision could offset the cost of the increased community supervision populations.

**Source Agencies:** 537 State Health Services, Department of, 696 Department of Criminal Justice

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