

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

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 7, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

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

**IN RE: HB287** by Dutton (Relating to the penalty for possession of a small amount of certain controlled substances.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB287, As Introduced: a positive impact of \$98,280,232 through the biennium ending August 31, 2011.

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:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2010	\$41,425,455
2011	\$56,854,777
2012	\$57,620,177
2013	\$56,943,928
2014	\$64,273,567

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

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from GENERAL REVENUE FUND 1</b>
2010	\$41,425,455
2011	\$56,854,777
2012	\$57,620,177
2013	\$56,943,928
2014	\$64,273,567

**Fiscal Analysis**

The bill would amend the Health and Safety Code by reducing the punishment for possession of less than one gram of controlled substances in Penalty Group 1 and Penalty Group 2 from a state jail felony to a Class A Misdemeanor.

The bill would take effect on September 1, 2009 and apply to offenses committed on or after that date.

**Methodology**

Penalty Group 1 controlled substances include, but are not limited to, opiates and opium derivatives (e.g., heroin), cocaine, and methamphetamines. Penalty Group 2 controlled substances include, but are not limited to, hallucinogenic substances (e.g., Mescaline and Tetrahydrocannabinols other than

marijuana). In fiscal year 2008, 8,638 state jail admissions were for possession of less than one gram of Penalty Group 1 controlled substances and 4 state jail admissions were for possession of less than one gram of Penalty Group 2 controlled substances. There were 5,952 offenders placed on felony community supervision for possession of less than one gram of Penalty Group 1 controlled substances and 200 offenders placed on felony community supervision for possession of less than one gram of Penalty Group 2 controlled substances. It is assumed a portion of the offenders no longer eligible for confinement in a state jail or placement on felony community supervision will be placed on misdemeanor community supervision.

In order to estimate the future impact of the proposal, the changes proposed for admission and release policy are applied in a simulation model, to (1) state jail admissions that reflect the distribution of offenses, sentence lengths, and time served, and (2) the decrease in the number of people added to community supervision. Included in the estimated savings are projected community supervision operating savings.

Incarceration savings by the Department of Criminal Justice are estimated on the basis of \$40.12 per state jail inmate per day for state jail facilities, reflecting approximate costs of either operating facilities or contracting with other entities, and \$2.76 per day per person placed on felony community supervision. The incarceration savings in the table above include the cost associated with placements on misdemeanor community supervision. At present community supervision and corrections departments receive 70 cents for 182 days for each person placed on misdemeanor community supervision.

### **Local Government Impact**

Conviction on a Class A misdemeanor is punishable by a fine not to exceed \$4,000; confinement in jail for a term not to exceed one year; or both the fine and the confinement. Implementing the provisions of the bill could cause a significant increase in the number of offenders remanded to local jails rather than state jails. Costs to local entities would vary depending on the number of offenders that are fined, jailed, both fined and jailed, or put on community supervision. If an offender is jailed, the average cost per day per inmate housed in a county jail would vary by county ranging from an estimated \$25 to \$61 per day.

**Source Agencies:** 696 Department of Criminal Justice

**LBB Staff:** JOB, ESi, GG, TP, LM