

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

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

IN RE: HB2086 by Moody (Relating to the prosecution and punishment of the offense of engaging in organized criminal activity.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2086, As Passed 2nd House: a negative impact of (\$26,000,000) through the biennium ending August 31, 2011.

There are provisions of the bill that are anticipated to have no significant fiscal impact to the State or that are assumed could be reasonably absorbed with existing resources. The fiscal impact of other provisions of the bill cannot be determined due to the unavailability of reliable data or information.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$13,000,000)
2011	(\$13,000,000)
2012	(\$13,000,000)
2013	(\$13,000,000)
2014	(\$13,000,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1
2010	(\$13,000,000)
2011	(\$13,000,000)
2012	(\$13,000,000)
2013	(\$13,000,000)
2014	(\$13,000,000)

Fiscal Analysis

The bill would amend the Civil Practice and Remedies Code, Code of Criminal Procedure, Family Code, Government Code, Health and Safety Code, Local Government Code, Penal Code, Transportation Code, Education Code, and Human Resources Code relating to criminal street gangs and certain other offenses.

The bill would increase the punishment of criminal solicitation of a minor to the same category as the solicited offense, depending on the circumstances, if certain elements of a criminal street gang are present. The offense is currently punishable as one category lower than the solicited offense. The bill would broaden the offense of coercing, soliciting, or inducing gang membership to include family members. The offense is punishable as a state jail felony or felony of the third degree depending on

the circumstances. The bill would create gang-free zones and increase punishment for offenses of engaging in organized criminal activity to the next higher category of offense if they occur in gang-free zones. The bill would allow for the use of maps as evidence of location or area for the purpose of showing the location and boundaries of gang-free zones. The bill would create the offense of directing activities of certain criminal street gangs punishable as a felony of the first degree. The bill would permit sentences for more than one offense arising out of the same criminal episode to run concurrently or consecutively if there is an affirmative finding regarding gang-related conduct unless the defendant's case was transferred to the court from the juvenile court. The bill would amend the Penal Code to include the offenses of escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission as punishable as engaging in organized criminal activity. The engaging in organized criminal activity provision increases the punishment of certain offenses to the next higher category. The fiscal impact of these provisions of the bill cannot be determined due to the unavailability of reliable data or information.

The bill would include graffiti, certain unlawful transfer of certain weapons offenses, and firearm smuggling to offenses punishable as engaging in organized criminal activity. The bill would create the offense of online harassment to further interest of criminal street gang punishable as a Class B misdemeanor, except the offense is a Class A misdemeanor if the actor has previously been convicted. The bill would create new civil action against criminal street gangs for a violation of injunction. The bill would make property obtained through organized crime offenses, certain unlawful transfer of certain weapons offenses, and firearm smuggling subject to forfeiture. The bill would create a finding regarding gang-related conduct to be entered in the judgment of a case if the applicable conduct was engaged in as part of the activities of a criminal street gang. The bill would add to possible conditions of community supervision relating to criminal street gangs. The bill would require juveniles who have been found to have engaged in delinquent conduct that is also gang-related conduct to participate in a criminal street gang intervention program. The bill would amend the Civil Practice and Remedies Code, Code of Criminal Procedure, Family Code, Government Code, Health and Safety Code, and Local Government Code as they relate to graffiti, fees and court costs, and aerosol paint. The bill would create the offense of burglary of a building to create graffiti punishable as a state jail felony. The bill would amend the Penal Code relating to the prosecution and punishment for certain criminal offenses involving the use of a false or fictitious identity or identifying document. The bill would create the offense of firearm smuggling punishable as a felony of the third degree or a felony of the second degree depending on the circumstances. The bill would add to the elements that must apply when determining criminal information collected in an intelligence database used to investigate and prosecute offenses committed by criminal street gangs. The bill would also change from three to five years the length of time records may be retained before information is removed. The bill would automatically suspend or prohibit issuance of a person's driver's license upon conviction of an offense related to organized crime and make operating a motor vehicle on a highway during the period of that suspension or prohibition punishable as a Class A misdemeanor. DPS states there would be some cost associated with driver's licenses; however, it is assumed the cost could be reasonably absorbed with existing resources. The bill would amend the Code of Criminal Procedure relating to an interception order for communication by specified person. The bill would amend the Education Code and Human Resources Code to require superintendents of public school districts, administrators of private schools, governing boards of higher education institutions, and day-care centers to provide information on gang-free zones and inform of the consequences of engaging in organized criminal activity within those zones. The bill would amend the Civil Practice and Remedies Code relating to civil racketeering. The bill would provide different penalties and remedies for racketeering. The bill would abate organized enterprises engaged in a pattern or practice of racketeering involving gambling, prostitution, unlawful manufacture, transportation, repair or sale of weapons, controlled substances and dangerous drugs, indecency involving minors, human trafficking, bigamy, or fraudulent use of identifying information. Under bill provisions, the Office of the Attorney General (OAG) may bring a civil suit to abate the racketeering and may seek to recover civil penalties, including attorneys fees. The bill would also require the Legislative Budget Board (LBB) to prepare an annual criminal justice impact policy statement for this Act. These provisions of the bill are not expected to have a significant fiscal impact or could be absorbed with existing resources.

The bill would permit the use of electronic monitoring of certain members of criminal street gangs

who are placed on community supervision or released to parole or mandatory supervision. The Texas Department of Criminal Justice states the cost for active GPS monitoring services is \$9.95 per day. It is anticipated that the cost could be absorbed with existing resources.

The bill would require the Texas Fusion Center to annually submit a report regarding criminal street gangs and gang-related crime. The bill would create a "Public Corruption Unit" within the Department of Public Safety (DPS). DPS states that they are unable to determine an accurate measure of the quantity of requests for assistance for the Public Corruption Unit; therefore, they are unable to determine the subsequent fiscal impact for provisions establishing that unit.

The bill would require the Governor's Criminal Justice Division to administer a competitive grant program to support regional, multidisciplinary approaches to combat gang violence through the coordination of gang prevention, intervention, and suppression activities. The bill would allow the criminal justice division to use any revenue available for the purposes of the bill. Implementation of the bill would result in an estimated \$13 million a year in General Revenue to provide grants to combat gang violence.

Methodology

The \$13 million for anti-gang grants is based on the amount in the Governor's Office Homeland Security plan under the Governor's Office for anti-gang activities.

Local Government Impact

There are provisions of the bill that are anticipated to have no significant fiscal impact to units of local government or that are assumed could be reasonably absorbed with existing resources. The fiscal impact of other provisions of the bill cannot be determined due to the unavailability of reliable data or information.

The bill would amend the Local Government Code to allow a county by order or a municipality by ordinance to require a person who sells aerosol paint to impose a surcharge not to exceed \$1 on each sale of aerosol paint. Money collected under this section may be used by local government only for purposes related to graffiti abatement.

Source Agencies: 301 Office of the Governor, 405 Department of Public Safety, 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, TP, KJG