

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 21, 2009

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

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

IN RE: SB1118 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 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1118, Committee Report 1st House, Substituted: a positive impact of \$11,562,653 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:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$4,620,783
2011	\$6,941,870
2012	\$8,555,125
2013	\$10,183,439
2014	\$11,602,992

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain from New General Revenue Dedicated
2010	\$4,620,783	\$1,662,000
2011	\$6,941,870	\$4,051,000
2012	\$8,555,125	\$4,116,000
2013	\$10,183,439	\$4,183,000
2014	\$11,602,992	\$4,253,000

Fiscal Analysis

The bill would amend the Code of Criminal Procedure and Government Code by requiring a judge to suspend the imposition of a sentence and place a defendant on community supervision for certain drug possession offenses. 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 treatment 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.

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 require a person convicted of alcohol and drug related offenses under Chapter 49 of the Penal Code and Chapter 481 of the Health and Safety Code to pay a \$50 court cost. These costs would be remitted to the Comptroller of Public Accounts (CPA) to be deposited in the Drug Treatment Program Account.

Methodology

For fiscal year 2008, approximately 13,300 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. At present, statewide criminal history records do not provide the exact amount the offender was convicted of possessing. It is assumed half of those convicted of a third degree felony would have possessed more than two grams and would not be eligible under the provisions of the bill. After excluding ineligible drug possession offenses, admissions with prior convictions of a felony offense other than drug possession, parole revocations for the current offense, community supervision revocations for the current offense, those released on shock probation, and third degree felonies where the amount possessed was more than two grams, 1,716 admissions would be affected by the provisions of the bill. For this analysis, it is assumed 82 percent of admissions are for state jail felonies and 18 percent are for third degree felonies.

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 \$40.12 per state jail inmate per day for state jail facilities, and \$47.50 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. 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 \$5.56 reflecting the cost of non-residential treatment alternatives to incarceration program for the probationers unable to pay their drug treatment program fees. Savings could be further offset based on the frequency with which residential substance abuse treatment may be required and duration for which the offender is required to stay in residential substance abuse treatment. Also included in the costs is the daily felony community supervision cost of \$2.76 per day and \$.70 for misdemeanor community supervision placement for 182 days 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.

According to the Comptroller of Public Accounts (CPA), the \$50 court cost charged to offenders convicted of drug and alcohol related offenses would provide a revenue gain to the state. The CPA estimated \$1.7 million in fiscal year 2010, which accounts for an implementation date of January 1, 2010. The agency then estimates \$4.1 million in revenue for fiscal year 2011, and an estimated annual growth of 1.6 percent per year through 2014. These estimates assume approximately 200,000 drug and alcohol related offenses and a collection rate of 40 percent.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Local Government Impact

The bill would create a new \$50 court cost that would be paid upon conviction of any offense under Chapter 49 of the Penal Code (DWI and related offenses) and under Chapter 481 of the Health and Safety Code (drug offenses).

According to the Office of Court Administration, based on fiscal year 2008 data, the total convictions and deferred adjudications was 193,333 in county-level and district courts for certain intoxication and drug offenses. This total is multiplied by \$50 to calculate the total court cost assessments of \$9,666,650. The assessment amount is multiplied by an estimated collection rate of 40 percent to arrive at projected revenues of \$3,866,660 per year. This amount is then decreased by 10 percent because counties retain 10 percent of the amounts collected when they remit funds to the Comptroller on time each quarter. The new total is \$3,479,994 which represents the annual amount of revenue resulting from implementing the bill. Local governments would see an increase in revenue due to the increased community supervision populations required to pay the \$10 increase in the court cost. The 10 percent of the total estimated increase in collections retained by counties would be an estimated \$386,666 per year.

The bill would permit a defendant placed on community supervision that receives a discharge and dismissal to petition the court for nondisclosure after notice to the state and a hearing. If the court determines that a defendant is entitled to file a petition, the defendant would be required to remit a fee of \$28 to the clerk of the court, in addition to any other fees required by a civil petition. The amount of revenue gain to local governments would vary depending on the number of defendants determined eligible to petition for nondisclosure required to pay the fees; however, those amounts are not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 696 Department of Criminal Justice

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