

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 17, 2009

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

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

IN RE: SB2075 by Hinojosa (Relating to the consequences of community supervision and to petitions and procedures for the expunction of criminal records and files and to orders of nondisclosure.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB2075, As Introduced: a negative impact of (\$166,180) 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	(\$83,090)
2011	(\$83,090)
2012	(\$83,090)
2013	(\$83,090)
2014	(\$83,090)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>State Highway Fund</i> 6	Probable Revenue Gain/ (Loss) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2009
2010	(\$1,780,920)	(\$83,090)	31.0
2011	(\$1,660,751)	(\$83,090)	31.0
2012	(\$1,440,327)	(\$83,090)	31.0
2013	(\$1,586,610)	(\$83,090)	31.0
2014	(\$1,437,969)	(\$83,090)	31.0

Fiscal Analysis

The bill would amend the Code of Criminal Procedure to require that an order of deferred adjudication community supervision that has resulted in a discharge and dismissal may not be deemed a conviction or considered as a factor relevant for the purposes of determining whether to issue, suspend, restrict, or revoke a certification, commission, license or permit.

Section four of the bill outlines a timeline under which persons placed on community supervision for certain offenses may become eligible for an expunction after a discharge or dismissal. The bill would require that persons placed on community supervision for misdemeanors would be entitled to an expunction immediately, unless the offense was a misdemeanor under Chapter 20 (Kidnapping and

Unlawful Restraint), 21 (Sexual Offenses), 25 (Offenses Against the Family), 42 (Disorderly Conduct and Related Offenses), or 46 (Weapons), Penal Code. Persons dismissed or discharged from community supervision for such misdemeanors would be entitled to an expunction on or after the second anniversary of the discharge and dismissal.

The bill would require that persons dismissed and discharged from community supervision for felony offenses would be entitled to an expunction after five years, unless the offense was a felony under Section 19.02 (Murder), 19.03 (Capital Murder), 20.04 (Aggravated Kidnapping), 21.11 (Indecency With a Child), 22.011 (Sexual Assault), 22.02 (Aggravated Assault), 22.021 (Aggravated Sexual Assault) or 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), Penal Code. Persons dismissed or discharged from community supervision for such felony offenses would be entitled to an expunction on or after the seventh anniversary of the discharge and dismissal. Persons entitled to expunctions under this section are only eligible if they have not been convicted of any other offense in the five years preceding the time of filing the petition and are not subject to pending charges for any other offense at the time of filing the petition.

The bill would repeal Sections 103.021(37) and 411.081(d)-(h), Government Code, which would remove fees paid for orders and petitions of nondisclosure. The bill would also repeal Section 469.001(b)-(c), Health and Safety Code.

Methodology

The Department of Public Safety (DPS) estimates that 2,215,301 current records would be eligible for expunction under the provisions of the bill, as well as 177,742 new records that are disposed each year. This analysis assumes petitions for expunction of existing records would be submitted at a rate of 10 percent (221,530) over the five year period, or approximately 44,306 per year. It is assumed that petitions for expunction of new records would also be submitted at a rate of 10 percent per year (17,774), for a total of 62,080 additional expunction petitions to be received each year.

This analysis assumes that each full-time equivalent (FTE) processes 2,000 expunctions annually. This analysis also assumes that an additional 31 FTEs (Administrative Assistant II positions at salary group A11 at \$31,055 per year and career progression in 12 months to Administrative Assistants III salary group A13 at \$34,492 per year) would be needed to process the additional 62,080 expunction requests. It is also assumed that additional office space will be required to accommodate the additional personnel at an estimated lease cost of \$223,983 per year for fiscal years 2010 and 2011. Other operating expenses include maintenance and repair of office machines and computer equipment, computer supplies, non-capital computer equipment, and furniture and equipment.

DPS reports that it received 140 petitions of nondisclosure and 5,795 orders of nondisclosure during fiscal years 2007 and 2008. The bill would repeal Sections 103.021(37) and 411.081(d)-(h), which allows a \$28 fee to be collected for each petition or order of nondisclosure. The repeal would result in an estimated loss of revenue of \$83,090 per year (140 petitions plus 5795 orders multiplied by \$28 fee and divided by 2).

Technology

The analysis includes estimated technology costs of computers, printers, and enterprise agreements totaling \$95,653 in fiscal year 2010 and \$4,730 in fiscal year 2011. The technology impact in fiscal year 2012 would be \$5,163, in fiscal year 2013 it would be \$79,073, and in fiscal year 2014 it would be \$4,752.

Local Government Impact

The fiscal impact to local governments could be significant and would vary depending on the number of petitions for expunction that meet the criteria established in the provisions of the bill.

The district clerk's office in Tom Green County reported the bill would require one additional staff position at a cost of \$30,000 per year, with a gradual increase of \$2,000 annually. Other counties that are similar in population size (104,000) to Tom Green would presumably incur the same type of administrative costs for their courts as well. For counties much larger than Tom Green, any additional

cost involved would be magnified two or three times the number.

One large urban county reported mailing well over 11,000 notices by certified mail in fiscal year 2007 to 2008. The certified rate of \$5 applied ($11,000 \times \$5 = \$55,000$) does not account for inflation in the postal prices.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 696 Department of Criminal Justice, 697 Board of Pardons and Paroles, 452 Department of Licensing and Regulation

LBB Staff: JOB, TP, ESi, GG, TB, MWU, ES