

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

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**March 14, 2011**

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

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

**IN RE: HB853** by Dutton (Relating to the penalty for certain offenders for possession of a small amount of certain controlled substances.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB853, As Introduced: a positive impact of \$123,392,505 through the biennium ending August 31, 2013.

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>
2012	\$57,248,627
2013	\$66,143,878
2014	\$72,959,874
2015	\$78,081,592
2016	\$82,284,069

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

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from GENERAL REVENUE FUND 1</b>
2012	\$57,248,627
2013	\$66,143,878
2014	\$72,959,874
2015	\$78,081,592
2016	\$82,284,069

**Fiscal Analysis**

The bill would amend the Health and Safety Code by reducing the punishment, for certain offenders, for possession of controlled substances in Penalty Group 1 (less than one gram), Penalty Group 1-A (fewer than 20 units), and Penalty Group 2 (less than one gram) from a state jail felony to a Class A Misdemeanor with a minimum term of confinement of 180 days. The bill would also require offenders placed on misdemeanor community supervision for possession of controlled substances in Penalty Groups 1, 1-A, and 2, successfully complete an education program on substance abuse awareness as a condition of community supervision. Offenders with certain previous convictions for possession of controlled substances would not be subject to the provisions of the bill.

The bill would take effect on September 1, 2011 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 1-A controlled substances include lysergic acid diethylamide (LSD), its salts, isomers, and salts of isomers. Penalty Group 2 controlled substances include, but are not limited to, hallucinogenic substances (e.g., Mescaline and Tetrahydrocannabinols other than marijuana). In fiscal year 2010, there were 14,514 admissions to state jail and 11,796 placements on felony community supervision for possession of a controlled substance in Penalty Group 1 (less than one gram), Penalty Group 1-A (fewer than 20 units), or Penalty Group 2 (less than one gram) punishable as a state jail felony. Based on arrest data, criminal history data, and sentencing trends it is assumed a portion of the offenders placed on felony community supervision or incarcerated in state jail would be subject to the provisions in this bill. It is also assumed a portion of these offenders no longer eligible for confinement in a state jail or placement on felony community supervision will be placed on misdemeanor community supervision. The bill would also require offenders placed on misdemeanor community supervision under the provisions of the bill successfully complete an education program on substance abuse awareness as a condition of community supervision. The Department of State Health Services does not anticipate a significant fiscal impact as a result of complying with the provisions of the bill.

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 \$43.03 per state jail inmate per day for state jail facilities, reflecting approximate costs of either operating facilities or contracting with other entities, and \$2.92 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 per day 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:** 537 State Health Services, Department of, 696 Department of Criminal Justice

**LBB Staff:** JOB, ESi, GG, LM, KKR, AI