

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

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**April 29, 2019**

**TO:** Honorable Nicole Collier, Chair, House Committee on Criminal Jurisprudence

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
 Legislative Budget Board

**IN RE: HB1719** by Thompson, Senfronia (Relating to the penalties for the possession of small amounts of Penalty Group 1 controlled substances and marihuana.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1719, As Introduced: a positive impact of \$100,914,651 through the biennium ending August 31, 2021. However, there are impacts to several General Revenue-Dedicated accounts and Other Funds under the bill's provisions as listed below.

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
2020	\$16,860,789
2021	\$84,053,862
2022	\$90,701,998
2023	\$93,059,266
2024	\$91,814,270

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

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from Various General Revenue Dedicated Accounts	Probable Revenue Gain/(Loss) from Judicial Fund 573
2020	\$17,323,232	(\$462,443)	(\$1,172,145)	(\$41,463)
2021	\$84,516,305	(\$462,443)	(\$1,172,145)	(\$41,463)
2022	\$91,164,441	(\$462,443)	(\$1,172,145)	(\$41,463)
2023	\$93,521,709	(\$462,443)	(\$1,172,145)	(\$41,463)
2024	\$92,276,713	(\$462,443)	(\$1,172,145)	(\$41,463)

## **Fiscal Analysis**

The bill would amend various codes to reduce the punishment for certain drug offenses. Depending upon the circumstances of the offense, certain felony drug offenses would be reduced to a lower category of felony or a misdemeanor and certain misdemeanor drug offenses would be reduced to a lower category of misdemeanor. The bill would take effect on September 1, 2019, and apply only to an offense committed on or after that date.

## **Methodology**

Reducing the penalties for the criminal offenses addressed by the bill's provisions are expected to result in fewer demands upon the correctional resources of counties or of the state, due to a decrease in the number of people placed under community supervision, a decrease in the length of stay under felony community supervision, a decrease in the number of people admitted into state correctional institutions, and a decrease in the length of stay within state correctional facilities. In fiscal year 2018, 8,832 of those who were placed under felony community supervision and 13,322 of those placed under misdemeanor community supervision would be impacted by the provisions of the bill. Under the provisions of the bill, those individuals under misdemeanor supervision would no longer be under supervision, and those under felony supervision would have their length of stay under community supervision reduced. Community Supervision and Corrections Departments receive \$0.70 per misdemeanor placement for 182 days, and receive state funds of \$1.92 for felony community supervision placements for the entire length of stay. In fiscal year 2018, there were 8,136 people admitted into state correctional facilities who, under the provisions of the bill, would no longer be eligible for incarceration and instead would be placed under misdemeanor community supervision or have their lengths of stay within state correctional institutions reduced. Savings and costs for incarceration in adult facilities are calculated at \$52.46 per day for state jail, \$62.34 per day for prison, and \$4.39 per day for parole supervision. These costs are based on the LBB's *January 2019 Criminal and Juvenile Justice Uniform Cost Report*.

The net impact to adult correctional agencies for fiscal year 2020 are estimated to be a savings of \$17,323,232, while the impact in fiscal year 2021 is estimated to be a savings of \$84,516,305. This analysis assumes the bill's provisions would reach partial implementation in fiscal year 2020 and reach full implementation in fiscal years 2021 and beyond.

Based upon case data from fiscal year 2018 and assuming a similar caseload in future years, the Office of Court Administration (OCA) estimates there were 39,164 convictions or orders of deferred adjudication in new Class A or B possession cases. According to the Department of Public Safety, 96 percent of convictions for Class A and B misdemeanor possession cases were for Class B possession of less than two ounces of marihuana, resulting in a total of 37,597 convictions or deferred adjudications.

Total court costs vary depending on the county and any additional services performed. The estimate provided by OCA assumes an average court cost of \$272 for Class B misdemeanors of which \$129.50 is remitted to the state and \$142.50 is retained by the county. Assuming a collection rate of 55 percent for county courts, the state would realize an annual revenue loss of \$2,677,846 (37,597 convictions x \$129.50 x 55 percent collection rate) from court cost revenue that would previously have been collected for Class B possession cases, but which would not be under the provisions of the bill.

The estimate provided by OCA assumes an average court cost of \$67 for Class C misdemeanors of which \$47.80 is remitted to the state and \$19.20 is retained by the county. Assuming a collection

rate of 80 percent for county courts, the state would realize an annual revenue gain of \$1,437,709 (37,597 convictions x \$47.80 x 80 percent collection rate) from court cost revenue that would now be collected for Class C possession cases under the provisions of the bill.

According to Department of Public Safety in fiscal year 2016, there were 26,419 state jail felony convictions for possession of a controlled substance for less than one gram. Under the bill's provisions, these convictions would become Class A misdemeanor offenses. The estimate provided by OCA assumes an average court cost of \$294 for state jail felony convictions of which \$159.50 is remitted to the state and \$134.50 is retained by the county. Assuming a collection rate of 55 percent for county courts, the state would realize an annual revenue loss of \$2,317,607 (26,419 convictions x \$159.50 x 55 percent collection rate) from court cost revenue that would previously have been collected for state jail felony possession convictions, but which would not be under the provisions of the bill.

This revenue decrease would be offset by a revenue gain resulting from transition of these cases from state jail felony possession to Class A misdemeanor offenses. The estimate provided by OCA assumes an average court cost of \$272 of which \$129.50 is remitted to the state and \$142.50 is retained by the county. Assuming a collection rate of 55 percent for county courts, the state would realize an annual revenue gain of \$1,881,693 (26,419 convictions x \$129.50 x 55 percent collection rate) from court cost revenue that would now be collected for Class A possession cases under the provisions of the bill.

In addition to impacts to the General Revenue Fund and Judicial Fund No. 573 as shown above, the following General Revenue-Dedicated accounts would see annual revenue impacts as shown in the table below. This includes revenue collected through the consolidated court cost which is distributed to various General Revenue-Dedicated accounts pursuant to Local Government Code 133.102.

<b>Annual Impact by General Revenue-Dedicated Account</b>	
Breath Alcohol Testing, Account 5013	\$ (6,144)
Center for Study and Prevention of Juvenile Crime & Delinquency, Account 5029	\$ (13,489)
Correctional Management Institute of Texas, Account 5083	\$ (13,489)
Crime Stoppers Assistance, Account 5012	\$ (2,880)
Crime Victims Compensation, Account 469	\$ (419,899)
Criminal Justice Planning, Account 421	\$ (140,068)
Emergency Radio Infrastructure Fund, Account 5153	\$ (62,375)
Fair Defense, Account 5073	\$ (182,185)
Judicial and Court Personnel Training, Account 540	\$ (53,960)
Law Enforcement Management Institute, Account 581	\$ (24,193)
Law Enforcement Retirement Fund, Account 977	\$ (124,323)
Law Officer Standards and Education, Account 116	\$ (55,825)
Statewide Electronic Filing System, Account 5157	\$ (103,392)
Truancy Prevention and Diversion, Account 5164	\$ 30,078
<b>Total General Revenue-Dedicated:</b>	<b>\$ (1,172,145)</b>

### **Local Government Impact**

The Texas Association of Counties anticipates a significant fiscal impact on counties since it will likely result in a large number of individuals, sentenced under Sec. 481.115(a), Health and Safety Code, serving time in county jails rather than in TDCJ facilities.

A Class C misdemeanor is punishable by a fine of not more than \$500. In addition to the fine, punishment can include up to 180 days of deferred disposition. A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

The Office of Court Administration anticipates that local governments will see an annual loss of revenue of \$2,252,932 but will see an annual savings of \$6,523,496 from Attorneys' fees.

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

**LBB Staff:** WP, LBO, LM, JPo, GDz, AF, LCO