

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 25, 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: HB4169 by Moody (Relating to the criminal penalties for certain criminal offenses.), As Introduced

Estimated Two-year Net Impact to General Revenue Related Funds for HB4169, As Introduced: a positive impact of \$140,184,609 through the biennium ending August 31, 2021. However, there would be decreases to General Revenue-Dedicated Accounts as shown 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 | \$13,825,900 |
| 2021 | \$126,358,709 |
| 2022 | \$152,086,577 |
| 2023 | \$154,881,693 |
| 2024 | \$155,096,307 |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund 1 | Probable Revenue (Loss) from Various General Revenue-Dedicated Accounts | Probable Revenue (Loss) from Judicial Fund 573 |
|--------------------|--|--|---|
| 2020 | \$13,825,900 | (\$924,957) | \$308,319 |
| 2021 | \$126,358,709 | (\$924,957) | \$308,319 |
| 2022 | \$152,086,577 | (\$924,957) | \$308,319 |
| 2023 | \$154,881,693 | (\$924,957) | \$308,319 |
| 2024 | \$155,096,307 | (\$924,957) | \$308,319 |

Fiscal Analysis

The bill would amend various codes to remove references to state jail felonies and replace them

with a fourth degree felony and reduce the punishment for several offenses. Under the provisions of the bill, offenses prosecuted as a fourth degree felony would be punished in the same manner as state jail felonies under existing statute, except individuals would be eligible for parole. The bill would also reduce the punishment for certain offenses from a state jail or third degree felony to a Class A misdemeanor, and the punishment for other offenses from a third degree to a fourth degree felony, depending upon the circumstances of the offense. 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 felony 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 in state correctional facilities. In fiscal year 2018, 10,378 of those who were placed under felony community supervision would be impacted by the provisions of the bill. Under the provisions of the bill, these individuals would have their length of stay under community supervision reduced. Of these, 10,248 would be placed under misdemeanor community supervision while the remaining 130 would be placed under felony supervision with a reduced length of stay. 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 11,753 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 in incarceration facilities reduced. In fiscal year 2018, 7,554 people were admitted into state correctional facilities who under the provisions of the bill would be eligible for parole. Based on current parole consideration and approval rates, 2,503 of these would have their length of stay reduced due to being released onto parole. Under the provisions of the bill, in fiscal year 2018, 20 individuals were committed to the Texas Juvenile Justice Department (TJJD) who could no longer be committed because their punishment would be reduced from a felony to a misdemeanor. 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. Savings and costs for the juvenile justice system are calculated at \$479.56 per day for TJJD state residential facilities, \$3.53 for juvenile probation supervision and \$41.07 for juvenile parole supervision. These costs are based on the LBB's *January 2019 Criminal and Juvenile Justice Uniform Cost Report*.

According to the Board of Pardons and Paroles (BPP), the bill will have a significant impact on the agency, as it will require additional voting members and staff to review the additional incarcerated individuals for release to parole and mandatory supervision and prepare parole summaries. In fiscal year 2018, there were 16,996 admissions to State Jails. BPP anticipates, in order to comply with the provisions of the bill, the agency would require an additional 2.0 Commissioners, 49.0 Institutional Parole Officers, and 4.0 support staff. This analysis assumes the fiscal impact of 68.0 FTEs would be \$4,459,898 in General Revenue, which includes salary, benefits, consumables, office space and one-time costs in fiscal year 2020. The fiscal impact in fiscal year 2021 would be approximately \$4,048,090 in General Revenue. The net impact to adult and juvenile correctional agencies for fiscal year 2020 are estimated to be a savings of \$13,825,900, while the impact in fiscal year 2021 is estimated to be a savings of \$126,358,709. 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. Additional costs potentially associated with increased demand on adult parole supervision programming are not included in this analysis and could be significant.

Based upon historical case data from the Department of Public Safety and assuming a similar caseload in future years, the Office of Court Administration (OCA) estimates there were 37,237 felony convictions that would become Class A misdemeanor offenses under the provisions of the bill. Total court costs vary depending on the county and any additional services performed. The estimate provided by OCA assumes an average court cost of \$294 for felonies 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 district courts, the state would realize an annual revenue loss of \$3,278,459 (37,237 convictions x \$159.50 x 55 percent collection rate) from court cost revenue that would previously have been collected for these felony cases, 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 felonies 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 \$2,661,821 (37,237 convictions x \$129.50 x 55 percent collection rate) from court cost revenue that would now be collected for Class A misdemeanor cases under the provisions of the bill. This includes an estimated annual revenue gain to the Judicial Fund of \$308,319.

The net impact of these changes results in an All Funds annual revenue decrease of \$616,638. In addition to impacts to Judicial Fund No. 573 (Other Funds) 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.

| Annual Impact by General Revenue-Dedicated Account | | |
|---|-----------|--------------------|
| Law Officer Standards and Education, Account 116 | GR-D 116 | \$(46,279) |
| Correctional Management Institute of Texas, Account 5083 | GR-D 5083 | \$(11,183) |
| Criminal Justice Planning, Account 421 | GR-D 421 | \$(116,116) |
| Crime Victims Compensation, Account 469 | GR-D 469 | \$(348,096) |
| Crime Stoppers Assistance, Account 5012 | GR-D 5012 | \$(2,387) |
| Breath Alcohol Testing, Account 5013 | GR-D 5013 | \$(5,094) |
| Center for Study and Prevention of Juvenile Crime & Delinquency, Account 5029 | GR-D 5029 | \$(11,183) |
| Fair Defense, Account 5073 | GR-D 5073 | \$(165,057) |
| Emergency Radio Infrastructure Fund, Account 5153 | GR-D 5153 | \$(51,709) |
| Judicial and Court Personnel Training, Account 540 | GR-D 540 | \$(44,733) |
| Law Enforcement Management Institute, Account 581 | GR-D 581 | \$(20,056) |
| Law Enforcement Retirement Fund, Account 977 | GR-D 977 | \$(103,064) |
| Total General Revenue-Dedicated: | | \$(924,957) |

The Office of the Attorney General and the Commission on Jail Standards indicate the duties and responsibilities associated with implementing the provisions of the bill could be accomplished using existing resources.

Local Government Impact

The Texas Association of Counties anticipates a significant fiscal impact on counties since it will result in a significant increase in the number of individuals serving time in county jails rather than in TDCJ facilities.

According to the Office of Court Administration (OCA), the bill would result in a revenue gain to counties of \$147,793. County courts may see an impact due to shifting the caseload from district courts (felony cases) to county courts (misdemeanor cases), however OCA assumes that due to decreasing criminal case workload in the county courts over the past decade, the increase in workload can be absorbed with existing resources. Counties may also see a decrease in the cost of appointed counsel, as counsel in felony cases are generally paid at a higher rate than counsel in misdemeanor cases; however, this amount will vary by jurisdiction.

The bill reclassifies several state jail felonies as Class A misdemeanor offenses. 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.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 409 Commission on Jail Standards, 644 Juvenile Justice Department, 696 Department of Criminal Justice, 697 Board of Pardons and Paroles

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