

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 6, 2021

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

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB169 by Thompson, Senfronia (Relating to the criminal 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 HB169, As Introduced : a positive impact of \$54,712,342 through the biennium ending August 31, 2023.

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:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2022	(\$43,566)
2023	\$54,755,908
2024	\$97,391,495
2025	\$97,121,876
2026	\$98,129,896

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from Various General Revenue Dedicated Accounts	Probable Revenue Gain/(Loss) from Other Funds, estimated 997
2022	(\$43,566)	(\$1,028,000)	(\$360,000)
2023	\$54,755,908	(\$985,000)	(\$345,000)
2024	\$97,391,495	(\$943,000)	(\$331,000)
2025	\$97,121,876	(\$903,000)	(\$316,000)
2026	\$98,129,896	(\$865,000)	(\$303,000)

Fiscal Analysis

The bill would amend various codes as they relate to penalties for small amounts of marihuana and certain controlled substances. Under the provisions of the bill, the penalty for marihuana under two ounces would be reduced from a Class B to a Class C misdemeanor and would no longer be subject to enhancement if the offense occurred in a drug-free zone, the penalty for certain controlled substances weighing less than one gram would be reduced from a state jail felony to a Class A misdemeanor with the drug-free zone enhancement reduced from a third degree to a state jail felony. The bill would take effect September 1, 2021 and apply only to an offense committed on or after the effective date of the Act.

Methodology

Reducing the penalties for criminal offenses is expected to result in fewer demands upon the correctional resources of counties or of the State due to a decrease in the number of individuals placed under supervision in the community or sentenced to terms of confinement in state correctional institutions. The penalty reductions are also expected to result in a decrease in total court costs assessed. This estimate is based on data provided by the Office of Court Administration, Department of Public Safety, and the analysis of the Comptroller of Public Accounts and Legislative Budget Board Staff.

From fiscal year 2018 through 2020, an average of 9,299 individuals were placed onto misdemeanor community supervision for the Class B misdemeanor and Class A misdemeanor offenses that would be reduced to Class C misdemeanor offenses with no enhancement as outlined in the bill. From fiscal year 2018 through 2020, an average of 10,639 individuals were placed onto felony community supervision, and 6,831 individuals were admitted into a state correctional institution for the third-degree and state jail felonies that would be reduced to state-jail felonies and Class A misdemeanors, respectively, as outlined in the bill.

The probable fiscal impact due to correctional population changes is based on fiscal year 2020 costs per day per person included in the *January 2021 Criminal and Juvenile Justice Uniform Cost* report. Community Supervision and Corrections Departments receive \$0.70 per misdemeanor placement for 182 days and receive state funds of \$2.13 for felony community supervision placements for the entire length of stay. The cost per day per person was \$62.52 for state jails and \$69.27 for system wide facilities. The savings include a time lag from the commission of the offense to placement or admission and are calculated by multiplying the adjusted placements or admissions based on the projections published in the *January 2021 Adult and Juvenile Correctional Population Projections* report by the duration and the per diem cost. These estimates are based on the assumption that arrests, court activity, sentencing, and other criminal justice system processes will return to pre-COVID-19 pandemic functions by the end of fiscal year 2022.

From fiscal years 2014 through 2019, the monthly average for the number of convictions for new Class A and B possession of marijuana cases was 3,382. This monthly average decreased in the pre-pandemic months of fiscal year 2020 (September through February) to 1,750. Convictions in subsequent months after March of fiscal year 2020 for these same offenses decreased substantially primarily due to the pandemic. From fiscal years 2014 through 2019, the annual average for the number of convictions for new state jail felonies for possession of a controlled substance within penalty group 1 weighing less than 1 gram was 31,643.

This estimate makes the following assumptions: that conviction rates for new Class A and B possession of marijuana cases will remain at pre-pandemic fiscal year 2020 levels for the 2022–23 biennium and in subsequent years, that conviction rates for new state jail felonies for possession of a controlled substance within penalty group 1 weighing less than 1 gram will remain stable for the 2022–23 biennium and in subsequent years, a 45 percent collection rate on court costs imposed on criminal offenses, and that 90 percent of consolidated court cost revenue will be remitted to the state and 10 percent will be retained locally to cover administrative costs.

Local Government Impact

According to the Texas Association of Counties, counties could experience a significant fiscal impact, however the extent of the fiscal impact would vary by county based on the number of affected offenders and the amount of time they have already served. Provisions of the bill would reduce the penalty for possession of certain amounts of controlled substances and marijuana from state jail felonies to Class C and Class A misdemeanor offenses. According to the Texas Association of Sheriffs, if prosecutors allow offenders awaiting trial to use time served, then county jail capacity and operating costs would be less impacted.

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 for Class C and Class A misdemeanors is not anticipated to have a significant fiscal implication.

A Class B misdemeanor is punishable by a fine of not more than \$2,000, confinement in jail for a term not to exceed 180 days, or both. Lost revenue from reduced fines imposed and collected for Class B misdemeanors is not anticipated to have a significant fiscal impact.

The Office of Court Administration estimates the bill would result in a net loss to local government of \$299,399 in criminal court costs, and a savings to local government of \$2,632,101 in attorneys' fees.

Source Agencies: 212 Office of Court Admin, 304 Comptroller of Public Accounts, 696 Department of Criminal Justice

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