

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 19, 2005

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

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

IN RE: HB2193 by Madden (Relating to the operation of a system of community supervision.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2193, As Engrossed: a positive impact of \$6,644,628 through the biennium ending August 31, 2007.

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
2006	\$1,403,325
2007	\$5,241,303
2008	\$6,721,940
2009	\$6,118,977
2010	\$8,583,029

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1
2006	\$1,403,325	\$1,856,000	(\$1,856,000)
2007	\$5,241,303	\$4,454,000	(\$4,454,000)
2008	\$6,721,940	\$4,454,000	(\$4,454,000)
2009	\$6,118,977	\$4,454,000	(\$4,454,000)
2010	\$8,583,029	\$4,454,000	(\$4,454,000)

Fiscal Analysis

The bill would amend sections of the Code of Criminal Procedure relating to the maximum period of community supervision, dismissal and discharge of defendants prior to the expiration of a term of deferred adjudication or community supervision, and the credit of time served by a defendant in certain correctional facilities while on community supervision. The bill would also require that a person pay a \$50 court cost for certain intoxication and drug offenses to be used to fund drug courts. The bill would authorize the establishment of drug courts, allow drug courts to collect fees from participants, and require counties with a population of 200,000 or more to establish a drug court program if the county receives federal or state funding. The bill would also require the Community Justice Assistance Division of the Texas Department of Criminal Justice to establish a prison diversion

pilot program that provides grants to selected departments for the implementation of a system of progressive sanctions.

The bill would create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either within or outside of the Treasury, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

Methodology

The bill would limit the maximum period of community supervision for a felony of the third degree to five years, unless it is a third degree offense that is violent as defined by Section 3g of the Code of Criminal Procedure, or requires registration as a sex offender. The maximum period of community supervision for a state jail felony would remain at five years. The maximum period of community supervision would continue to be 10 years for Section 3g violent offenders, offenders requiring sex offender registration, and offenders with offenses punishable as first or second degree felonies. It would take more than five years for the full reduction in the community supervision population to be achieved since this provision would only apply to third degree felony offenders placed on community supervision on or after September 1, 2005. It is assumed that no fiscal impact would be realized in the first two years of implementation of this provision.

The bill would also require a judge to review a defendant's record and consider whether to terminate the period of community supervision on completion of one-half of the original community supervision period. The bill would allow a state jail felon to be considered for early termination, which is not permissible under current law. Currently, 5 percent of all community supervision terminations are terminated early as a result of a judge's review. If judges are required to review all eligible cases for early termination, as defined by the bill, a larger number of defendants on community supervision could be released early from supervision. For fiscal year 2004, 50 percent of defendants released from community supervision completed more than one-half of their original community supervision periods and could therefore, benefit from this provision. This provision would apply to all eligible persons currently on community supervision. For this analysis it is assumed that for first, second and third degree felony community supervision placements, the judicial review requirement would result in a 10 percent increase in community supervision terminations in fiscal year 2006 and a 5 percent increase in terminations in subsequent fiscal years. For state jail felony community supervision placements, it is assumed that the judicial review requirement would result in a 5 percent increase in community supervision terminations in fiscal year 2006 and a 2 percent increase in terminations in subsequent fiscal years. The higher percent increase in community supervision terminations in fiscal year 2006 is attributed to the large number of defendants on community supervision as of September 1, 2005 that have exceeded the proposed review timeline criteria established by the bill.

In order to estimate the future impact of the bill, the changes proposed for admission and release policies are applied in simulation models, to estimate the decrease in the number of people on community supervision resulting from the proposed reduction in maximum periods of community supervision, and decreased prison admissions due to fewer probation revocations.

Costs of incarceration by the Texas Department of Criminal Justice are estimated on the basis of \$40 per inmate per day for prison facilities, reflecting approximate costs of either operating prison facilities or contracting with other entities. For fiscal years 2006 and 2007, the cost savings from reduced community supervision populations is estimated at \$3,119,281, while cost savings from reduced revocations to prison is estimated at \$3,525,347. After five years of cumulative impact, fiscal implications will continue as long as the provisions of the bill are implemented.

Additionally, the bill would require a person to pay a \$50 court cost on conviction of an intoxication or drug-related offense. Court costs are to be deposited in the county or municipal treasury and sent to the Comptroller of Public Accounts (CPA) before the last day of the first month following each calendar quarter. A county or municipality may retain 10 percent of the funds collected. The CPA would deposit the funds to the credit of the drug court account in the General Revenue Fund to help fund drug courts. The CPA estimates a state revenue gain of \$1,856,000 in fiscal year 2006 and \$4,454,000 in each fiscal year thereafter. The CPA also estimates that counties or municipalities

would be able to retain a total of \$206,000 in fiscal year 2006 and a total of \$495,000 in each fiscal year thereafter as directed by this provision of the bill.

The bill has several provisions dealing with the establishment, funding, and eligibility for drug court participation for adult and juvenile offenders. The bill would require counties with a population of 200,000 or more to establish a drug court program, but only if the county receives federal or state funding specifically for the purpose of establishing a drug court. According to the Criminal Justice Division of the Office of the Governor, the state currently distributes \$750,000 to seven counties that have 500,000 or more residents and are statutorily required to have drug courts. Dropping the population threshold to 200,000 would require thirteen additional counties to have drug courts (six of which already have courts) and increase the number of drug courts in Texas to twenty counties. As mentioned earlier, the requirement of a \$50 court cost on a conviction of an intoxication-related or drug-related offense would generate revenue in addition to the current \$750,000 appropriation that has been the annual appropriation amount since fiscal year 2002. The additional revenues generated by the bill would allow the 20 courts to be funded at a higher level per court than is currently provided for the mandated courts. This fiscal analysis assumes that the additional revenue deposited in the state treasury would be appropriated to the Criminal Justice Division of the Governor's Office to support drug courts in the mandated counties.

Provisions of the bill would require the Attorney General (AG) to defend a statutory county court judge in an action in state or federal court if the cause of action is the result of their performing duties related to the Community Supervision and Corrections Department (CSCD) or if the judge requests the AG's assistance. It is assumed that if there were an increase in the Attorney General's caseload as a result of implementation of the bill, the workload would be absorbed using existing resources.

The bill would also authorize the State Auditor's Office (SAO) to conduct an audit of a CSCD's accounts, records, receipts, and expenditures. Current statute authorizes audits of CSCD records by the county auditor, Comptroller of Public Accounts, and the Community Justice Assistance Division of the Texas Department of Criminal Justice, but does not include the SAO. According to the SAO, any auditing of the CSCDs would be based on the SAO's on-going risk assessment and audit planning processes, and approval by the Legislative Audit Committee. Therefore, any fiscal impact would be absorbed within existing resources.

The bill would also prohibit a judge from refusing to terminate a period of community supervision solely on the grounds that a defendant is indigent and unable to pay all fines, would require the Community Justice Assistance Division of the Texas Department of Criminal Justice to establish a prison diversion pilot program that provides grants to selected departments for the implementation of a system of progressive sanctions, and would require the establishment of drug courts. These provisions could result in further savings to the state due to reduced admissions to prison and state jails, depending on the extent to which these provisions are utilized; however, potential savings from these provisions are not included in this analysis.

Local Government Impact

Under existing statute, in addition to funding received from the state for each felony offender on direct community supervision, the court may impose a supervision fee on the offender to help offset the costs of their supervision. Collection of the supervision fee and other fees imposed on offenders may be spread over the length of their community supervision; a shorter period of supervision could reduce the collection rate. However, if the majority of felony community supervision cases are not extended beyond the proposed maximum terms, there would be a reduction in the number of felony offenders under supervision, which would result in reduced workload and costs to a community supervision and corrections department (CSCD).

While the fiscal impact would vary by CSCD, the statewide loss in revenue to CSCDs through state funding would be equivalent to the savings to the state from reduced community supervision populations. In this analysis it is estimated that savings from reductions to community supervision populations from this bill would be \$3,119,281 for fiscal years 2006 and 2007.

Section 11 of the bill would implement a new fee on certain intoxication and drug convictions.

Counties and municipalities would be able to retain ten percent of the fee as a collection fee. According to the CPA, this could result in approximately \$206,000 for local governments in fiscal year 2006 and \$495,000 in each fiscal year thereafter.

Section 16 of the bill would make the drug court program mandatory in 13 additional counties in the state only if the commissioners courts of these counties obtain the funds from federal and state sources to implement the program. This fiscal analysis assumes that state funds generated from the new fee would be appropriated to the Criminal Justice Division of the Governor's Office for grants to the counties to establish and operate the drug courts.

Sections 17 through 24 and Section 26 of the bill would amend the Government Code to require statutory county court judges trying criminal cases in the county or counties served by a judicial district to participate with judicial district judges in the establishment of the Community Supervision and Corrections Department (CSCD) and approval of the department's budget and community justice plan. The revised statute would specify the responsibilities of the CSCD director.

Under current statute, the judicial district judges alone establish the CSCD, approve the community justice plans, and are authorized to employ CSCD personnel, among other areas of involvement with the department. Current statute also states that the district judges and county court judges trying criminal cases are entitled to participate in the management of the CSCD. The proposed change in statute, in addition to requiring that county court judges trying criminal cases participate with the district judges in establishing the CSCD and approving the budget and the community justice plan, would limit management of the CSCD to the director only.

Through the prison diversion pilot program, some local community supervision and corrections departments may receive more or less through grant programs compared to current awards.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 537 Department of State Health Services, 601 Department of Transportation, 696 Department of Criminal Justice

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