

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

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**May 5, 2005**

**TO:** Honorable Jerry Madden, Chair, House Committee on Corrections

**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.),  
**Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2193, Committee Report 1st House, Substituted: a positive impact of \$44,428,866 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	\$11,859,403
2007	\$32,569,463
2008	\$26,750,098
2009	\$25,909,909
2010	\$23,256,288

**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	\$11,859,403	\$1,856,000	(\$1,856,000)
2007	\$32,569,463	\$4,454,000	(\$4,454,000)
2008	\$26,750,098	\$4,454,000	(\$4,454,000)
2009	\$25,909,909	\$4,454,000	(\$4,454,000)
2010	\$23,256,288	\$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, the limits for which judges can extend 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 maximum period of community supervision for certain violent offenders (Section 3g of the Code of Criminal Procedure) and for offenders requiring registration as a sex offender would continue to be 10 years. For other felony offenders of the first, second or third degree, the bill would lower the maximum period of community supervision from 10 years to five years for judge-ordered community supervision and deferred adjudication. The bill would lower the maximum period of community supervision for persons convicted of state jail felonies from five years to three years, except that the judge may extend the maximum period of community supervision to not more than five years. Under current law the judge can extend the maximum period of community supervision for state jail felons to 10 years. Because the bill would apply to all persons on community supervision on or after the effective date of the bill, the impact would be substantial in fiscal years 2006 and 2007 due to the significant number of persons in the community supervision population who have served more than the maximum community supervision terms proposed by the bill (5 years for felonies and 3 years for state jail felonies). For the purposes of this analysis, it is assumed that persons who have served more than the proposed maximum terms and are eligible for release under the bill would be distributed throughout fiscal year 2006, rather than all released at the beginning of the fiscal year.

In order to estimate the future impact of the proposal, 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. 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 a conviction of an intoxication-related 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 remaining funds to the credit of the drug court account in the General Revenue Fund to 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 afterwards. 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 afterwards 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 provision of the bill requiring judges to review a defendant's record and consider whether to reduce or terminate the period of community supervision at one-half of the original community supervision period, could result in further savings depending on the extent to which the provision would be applied by judges; however, it is not included in this analysis. The bill would prohibit a judge from refusing to terminate a period of community supervision solely on the ground that a defendant is indigent and unable to pay all fines. The bill would also allow a state jail felon to be considered for early termination or reduction of terms but would forbid certain violent offenders from consideration. Savings from these provisions are also not included in this analysis. Finally, the bill 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. This analysis assumes that the pilot program would be established through current appropriations for local grant funding. Such a program could lead to reduced revocations to TDCJ and result in additional savings, but such savings 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 less than the savings to the state indicated in the table above.

Section 12 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 17 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 18 through 25 and Section 27 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 the 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 plan, 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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