

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2235-01
Bill No.: SB 551
Subject: Drugs and Controlled Substances; Prisons and Jails; Corrections Department;
 Criminal Procedure; Crimes and Punishment
Type: Original
Date: March 18, 2009

Bill Summary: This legislation modifies provisions relating to drug offenses and substance abuse treatment.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(\$317,512 to Unknown)	(\$750,975 to Unknown)	(\$916,977 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$317,512 to Unknown)	(\$750,975 to Unknown)	(\$916,977 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on FTE	0	0	0

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Sections 217.362, 558.019 & 559.115:

Officials from the **Office of Prosecution Services** and the **Office of the State Courts Administrator** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Office of the State Public Defender (SPD)** state for purposes of this proposed legislation, the SPD cannot assume existing staff will provide competent, effective representation for any cases arising where indigent persons are charged with the enhanced provisions of the sale of possession of meth.

While the number of new cases may be too few or uncertain to request additional funding for this specific proposal, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all of the SPD cases.

Oversight assumes the SPD could absorb the additional caseload that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the SPD would be reflected in future budget request.

Officials from the **Department of Corrections (DOC)** states this legislation restricts the long term drug program to offenders guilty of two or more prior felonies, or completed a drug program for a methamphetamine drug conviction and has a subsequent drug conviction or a drug violation while on supervision. Current DOC policy requires offenders to have three prior felonies but there is probably no justification for giving preference to offenders with convictions for methamphetamine drug offenses. The program is designed for all offenders with a serious drug addiction.

This proposal removes the exclusion of the first release to probation from programs defined in §217.362 and §559.115 from the commitment count for the minimum prison term (MPT). The exclusion was enacted in SB5 in 2003. From FY2004 to FY2006 there was a decline in the percentages of offenders admitted with new sentences who were required to serve 40%, 50% or 80% and the reduction was attributed to the exclusion of the first probation release in SB5. The impact of SB5 is estimated to be a total reduction of 2% in the number of offenders required to serve a minimum prison term (MPT.)

ASSUMPTION (continued)

The proposed changes comprise a reduction of 1% in offenders serving 40%; 0.5% of offenders serving 50%; and 0.5% of offenders serving 80%. In FY08 there were estimated to be 8,167 offenders admitted with a new non-drug sentence (MPT does not apply to drug offenses) and the proposed changes would affect 163 offenders. Accounting for the additional time served, the impact on the population would be an increase of offenders as follows: 31 in FY11, 47 in FY12 and 157 each year following.

Prohibiting probation for offenders convicted of a class A or class B drug offenses that involves the use of methamphetamine unless the offenders complete a 120-day program is another change in this legislation. The type of drug is not always entered onto the DOC sentencing file, but an estimate of the number of offenders convicted of a methamphetamine offense based upon the instances where the drug was described on the sentencing and judgment indicates that about 25% of offenders who were sentenced to probation were convicted for offenses involving methamphetamine.

In FY08 there were 1,313 offenders sentenced to probation for a class A or B felony drug offense and it is estimated there would be 328 additional offenders who would be required to complete a 120-day program. The DOC Institutional Treatment Center program normally operates at capacity and the additional offenders would require an offsetting number of 120-day offenders to serve a shock probation program in a general population institution. Over 80% of offenders are assessed to have a substance abuse problem so the increase in shock probation would not provide any treatment that would reduce future recidivism. The impact on the institutional population will be an increase of 108 in the population (328/3) during each fiscal year.

There is also likely to be an additional impact on the population because class A/B drug offenders who are sentenced to probation have lower recidivism than similar offenders who are sentenced to the 120-day program. The difference in recidivism after three years based upon a study of offenders on probation or released to probation from 2000 to 2005 is estimated to be 10%-12%, depending upon the level of prior criminal history. The total impact of mandating 120 day for probationers is estimated to be 33 in FY14 and 66 each following year. Note that the average time served by revoked probationers is two years.

In summary, the estimated total of offenders serving additional prison years due to this legislation, if passed, is 108 offenders in FY10; 139 in FY11; 155 in FY12; 265 in FY13; 298 in FY14 and 331 each subsequent FY.

Fiscal Impact: \$317,512 in FY10, \$750,975 in FY11 and \$916,977 in FY12.

SEC:LR:OD (12/02)

ASSUMPTION (continued)

It is estimated the increase in population will increase incrementally over the fiscal year. For cost estimates, a snapshot of the midyear average population was used to determine fiscal impact.

Assumptions used to determine cost and rounded to the nearest whole number include:

\$15.64 (FY08 cost) inmate daily direct expenses with an inflation rate of 3% per each subsequent year.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY08 average of \$15.64 per offender, per day or an annual cost of \$5,709 per inmate) or through supervision provided by the Board of Probation and Parole (FY08 average of \$2.47 per offender, per day or an annual cost of \$902 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional costs and although the exact fiscal impact is unknown, it is estimated that potential costs will be in excess of the indicated measurable dollar amount per year.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE FUND			
<u>Costs - Department of Corrections</u>			
Incarceration/probation costs	<u>(\$317,512 to Unknown)</u>	<u>(\$750,975 to Unknown)</u>	<u>(\$916,977 to Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$317,512 to Unknown)</u>	<u>(\$750,975 to Unknown)</u>	<u>(\$916,977 to Unknown)</u>
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2010 (10 Mo.)	FY 2011	FY 2012
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

Sections 217.362, 558.019 & 559.115:

Currently, chronic nonviolent offenders with substance abuse addiction can receive long-term drug treatment from the Department of Corrections. This legislation would allow such nonviolent persons to receive such treatment when they are eligible for probation and parole, and have:

- (1) Pleaded guilty to or been found guilty of two prior felonies; or
- (2) Completed a one hundred twenty day treatment program for a methamphetamine offense and have either subsequently pleaded guilty to or been found guilty of a drug offense or have violated terms of probation and the substance abuse was a precipitating or contributing factor in the commission of the probation violation.

Currently, an offender's first time incarceration in the Department under the long-term drug treatment program or a one hundred twenty day treatment program is not considered a previous prison commitment under the minimum sentencing requirements. The legislation removes these provisions from law. Also under this legislation, methamphetamine offenses shall be subject to the minimum sentencing requirements.

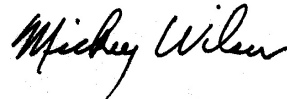
In any case when the offender has committed a distribution, unlawful purchase with a minor, manufacturing, or production of methamphetamine offense that is a Class A or B felony, he or she must serve one hundred twenty days in the Department of Corrections before being eligible for probation or parole.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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SOURCES OF INFORMATION

Office of the State Courts Administrator
Department of Corrections
Office of Prosecution Services
Office of the State Public Defender

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
March 18, 2009