

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0157-10
Bill No.: SCS for SB Nos. 8 & 74
Subject: Courts; Criminal Procedure; Crimes and Punishment; Prisons and Jails
Type: Original
Date: April 8, 2019

Bill Summary: This proposal modifies the criminal offenses that are punished by a minimum prison term.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
General Revenue	\$1,005,920	\$1,635,249	\$1,524,052	\$5,868,866
Total Estimated Net Effect on General Revenue	\$1,005,920	\$1,635,249	\$1,524,052	\$5,868,866

ESTIMATED NET EFFECT ON OTHER STATE FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses. This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
General Revenue	0	0	0	4 FTE
Total Estimated Net Effect on FTE	0	0	0	4 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any Of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS				
FUND AFFECTED	FY 2020	FY 2021	FY 2022	Fully Implemented (FY 2023)
Local Government	\$0	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Corrections (DOC)** assume a direct impact from this legislation would result in a cost avoidance that would be fully implemented in FY2023 of \$5,868,866. The proposed legislation modifies the criminal offenses that are punished by a minimum prison term (MPT). The changes in this version of FN0157 makes the provisions concerning commitment count minimum prison terms retroactive to apply to offenders currently incarcerated.

The impact of the proposed changes are computed separately for the offenses that will not serve an MPT but currently do and those offenses (drug trafficking) that will serve a MPT but currently do not. The total impact to the DOC will be a decrease in the prison population of 192 in FY20 and then to 925 in FY23. There will be an offsetting increase in parole supervision.

Total Impact	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
Prison Population										
Removing MPT	-192	-255	-255	-967	-967	-967	-967	-967	-967	-967
Adding MPT			22	42	42	42	42	42	42	42
Total	-192	-255	-233	-925	-925	-925	-925	-925	-925	-925
Field Population	192	255	233	925	925	925	925	925	925	925
P&P Officers + or -				4	4	4	4	4	4	4

The total impact was determined by the following:

I) The number of offenders who are sentenced to a minimum prison term for an eligible offense

In FY18, there were 1,885 offenders who had a parole hearing and were sentenced to a minimum prison term with an eligible nonviolent offense. The average sentence ranged from 5.8 years by offenders who had served one prior DOC incarceration and were required to serve 40% of the sentence to 6.0 years by offenders who had served three or more DOC incarcerations and were required to serve 80% of the sentence before parole eligibility. In addition, there are estimated to be 45 offenders serving drug trafficking offenses who had prior DOC incarcerations and would have served an MPT. The trafficking offenses include drug trafficking 1st degree and drug trafficking 2nd degree with an enhanced sentence.

ASSUMPTION (continued)

**New admissions with parole hearings in FY18
 Serving a minimum prison term
 Defined nonviolent offenses**

Minimum Prison Term	Hearings	Average Sentence (years)
Drug Trafficking	45	12.3
40%	1,133	5.8
50%	467	5.9
80%	285	6.0
Total	1,930	5.9

ii) **The number of offenders who would have been required to serve a minimum prison term but who will be released by the Board of Probation and Parole after serving a shorter prison stay.**

The estimate of how many offenders who will no longer be required to serve a minimum prison term and will be released earlier is based upon the Board's calculation of a guideline release date.

**New admissions with a parole hearing in FY18
 MPT offenders likely to be released on the guideline date**

MPT	Release date is the MPT date and not ASAP	Guideline date is less than 90 days from Admission (ASAP)	Release date is after the MPT date	Releases Decisions	Percent Released on MPT date not ASAP
40%	436	93	604	1,133	38.5%
50%	227	45	195	467	48.6%
80%	146	48	91	285	51.2%
Total	809	186	890	1,885	42.9%

In FY18, there were 1,885 planned releases of offenders who had been required to serve a minimum prison term of which 809 (42.9%) are estimated to be offenders who could be released earlier. These are offenders who will be released on the MPT date and were not ASAP. ASAP offenders are offenders who had a guideline release date that was within the first 90 days of incarceration. This occurs when offenders are admitted with significant jail time that is credited to the time served. ASAP offenders (186) cannot be released on the guideline date because of the time required for the administrative tasks of holding a hearing and arranging for the release. The offenders who were released after the MPT date (890) are high risk offenders are also excluded from an early release if the MPT was removed.

ASSUMPTION (continued)

**Average time served serving a MPT and the guideline term
 MPT offenders likely to be released on the guideline date**

MPT	Released on MPT (not ASAP)	Average Sentence (years)	Average MPT (years)	Average Guideline/ (years)	Guideline Percent Served	Reduction in time to first release (years)	Increase in parole recidivism (years)	Net reduction in time served (years)	Total reduction in prison population
40%	436	5.4	2.2	1.4	26%	0.8	0.3	0.5	229
50%	227	5.7	2.9	1.6	29%	1.2	0.4	0.8	189
80%	146	6.2	5.0	2.0	32%	3.0	1.0	1.9	297
Total	809	5.7	2.9	1.6	28%	1.3	0.5	0.8	712

The calculation of the reduction in the time served is the difference between the MPT time (2.9 years) and the average guideline time served (1.6 years) multiplied by the number of offenders to be released on the MPT date (809). The DOC is offsetting this reduction in time served by adding back 35% of the reduction as an estimate of increased recidivism from a longer period on parole. The estimate of 35% is the average time offenders discharged from parole in FY18 spent in prison after first release because their parole was revoked. After adding in the parole recidivism, the average reduction in time served is 0.8 years, resulting in a total reduction in the prison population of 712 which will be achieved by FY2023. The reduction in the prison population will be offset by an increase in parole population. The increase in the parole population is estimated to need an increase of three P&P officers.

Change in prison admissions and probation openings with legislation

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
New Admissions										
Current Law	809	809	809	809	809	809	809	809	809	809
After Legislation	809	809	809	809	809	809	809	809	809	809
Probation										
Current Law	-	-	-	-	-	-	-	-	-	-
After Legislation	-	-	-	-	-	-	-	-	-	-
Change (After Legislation - Current Law)										
Admissions	0	0	0	0	0	0	0	0	0	0
Probations	0	0	0	0	0	0	0	0	0	0
Cumulative Populations										
Prison	-	-	-	-712	-712	-712	-712	-712	-712	-712
Parole	-	-	-	712	712	712	712	712	712	712
Probation	-	-	-	0	0	0	0	0	0	0
Impact										
Prison Population	-	-	-	-712	-712	-712	-712	-712	-712	-712
Field Population	-	-	-	712	712	712	712	712	712	712
Population Change	-	-	-	-	-	-	-	-	-	-
P&P Officers + or -	0	0	0	3	3	3	3	3	3	3

iii) Increase in time served by offenders required to serve a minimum prison term for drug trafficking

Using a similar methodology for calculating the impact of adding a MPT it is estimated that of the 45 drug trafficking offender with a MPT, 22 would be released on the MPT date and they will serve an average of 6.1 years before parole instead of the 3.1 years that the parole board would have required. This is an increase of 3.0 years, but there will be a decrease in parole recidivism of 1.1 years because the offenders are serving longer to first release. The total increase in the population is 42.

ASSUMPTION (continued)

Adding drug trafficking to the MPT offenses

	Release Decisions	Released on MPT date	Average MPT (years)	Average Guideline/ (years)	Guideline Percent Served	Increase in time to first release (years)	decrease in parole recidivism (years)	Net increase in time served (years)	Total increase in prison population 10 years	Increase after 10 years
40%	27	13	4.9	3.0	24%	2.0	0.7	1.3	16	16
50%	11	6	6.2	3.1	25%	3.1	1.1	2.0	11	11
80%	7	4	9.8	3.4	28%	6.4	2.2	4.2	15	15
Total	45	22	6.1	3.1	28%	3.0	1.1	2.0	42	42

The combined impact is a decrease in the prison population of 670 and an increase in the parole population of 670.

Combined Impact

	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
Prison Population										
Removing MPT				-712	-712	-712	-712	-712	-712	-712
Adding MPT			22	42	42	42	42	42	42	42
Total			22	-670	-670	-670	-670	-670	-670	-670
Field Population			-22	670	670	670	670	670	670	670
P&P Officers + or -				2	2	2	2	2	2	2

iv) The release of currently incarcerated offenders serving a nonviolent MPT sentence.

The legislation in version 10 makes the change in the MPT retroactive and will remove the MPT from offenders serving eligible nonviolent offenses. The estimate of the offenders affected by the removal is the number of eligible MPT offenders who have a release date set on the MPT date but who have a guideline release that has already passed. The reduction in the time served is the time from today to the minimum prison term date. The reduction is offset by 35% to account for an increase in parole returns because of an increase in the time on supervision. An estimate is made for FY2020 and FY2021. The estimate for FY2021 is one third of the FY2020 estimate.

Offenders incarcerated serving an MPT who could be released without the MPT

Minimum Prison Term	FY2020 Count	FY2021 Count	Average Sentence (years)	Reduction in time served (years)	Increase in parole violators	Population reduction FY2020	Population reduction in FY2021
40	171	56	5.6	0.4	0.3	43	14
50	144	48	5.9	0.7	0.4	64	21
80	147	49	6.4	0.9	0.6	85	28
Total	462	152	6.0	0.6	0.4	192	63

Applying the change in the MPT retroactively will effect 462 offenders in FY2020 and 152 offenders in FY2021 and the average reduction in the time served will be 0.4 years, resulting in a one-time reduction of 192 in the prison population in FY2020 and a reduction of 63 in FY2021.

ASSUMPTION (continued)

In December 2017, the DOC reevaluated the calculation used for computing the Probation and Parole average daily cost of supervision and revised the cost calculation to be used for 2019 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases. For instances where the proposed legislation affects a less specific caseload, DOC projects the impact based on prior year(s) actual data for DOC's 57 probation and parole districts. When projecting the impact for each probation and parole district, DOC uses actual caseload dispersion data to determine the caseload impact per district, and therefore project the number of officers needed when adding at least 51 offender cases in a district.

The DOC cost of incarceration is \$17.224 per day or an annual cost of \$6,287 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

DOC assumes the total impact for this version below:

	fewer # in prison	Cost per year	Total Savings for prison	increased # on probation & parole	Add'l P&P Officers needed FTE	Total cost for probation and parole	Grand Total - Prison and Probation (includes and 2% inflation)
Year 1	(192)	(\$6,287)	\$1,005,920	192	0	\$0	\$1,005,920
Year 2	(255)	(\$6,287)	\$1,635,249	255	0	\$0	\$1,635,249
Year 3	(233)	(\$6,287)	\$1,524,052	233	0	\$0	\$1,524,052
Year 4	(925)	(\$6,287)	\$6,171,429	925	4	(\$302,563)	\$5,868,866
Year 5	(925)	(\$6,287)	\$6,294,857	925	4	(\$270,732)	\$6,024,125
Year 6	(925)	(\$6,287)	\$6,420,754	925	4	(\$273,645)	\$6,147,109
Year 7	(925)	(\$6,287)	\$6,549,169	925	4	(\$276,598)	\$6,272,571
Year 8	(925)	(\$6,287)	\$6,680,153	925	4	(\$279,582)	\$6,400,571
Year 9	(925)	(\$6,287)	\$6,813,756	925	4	(\$282,600)	\$6,531,156
Year 10	(925)	(\$6,287)	\$6,950,031	925	4	(\$285,660)	\$6,664,371

ASSUMPTION (continued)

Oversight has no information which contradicts DOC's response and will reflect a net cost avoidance that is fully implemented in FY2023 of \$5,868,866.

Officials at the **Office of the State Courts Administrator**, the **Office of the State Public Defender**, the **Office of Prosecution Services** and the **Office of the Attorney General** each assume no fiscal impact to their respective agencies from this proposal.

In response to a previous version, officials at the **Department of Social Services** assumed no fiscal impact from this proposal.

Oversight notes that the Office of the State Courts Administrator, the Office of the State Public Defender, the Office of Prosecution Services, the Department of Social Services and the Office of the Attorney General each has stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

<u>FISCAL IMPACT -</u> <u>State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2023)
GENERAL REVENUE				
<u>Cost - DOC -</u> additional Probation and Parole Officer for decreased number of offenders in prisons	\$0	\$0	\$0	(\$302,563)
FTE Change - DOC -P&P officers	0 FTE	0 FTE	0 FTE	4 FTE
<u>Cost Avoidance -</u> DOC - reduction of prisoner population	<u>\$1,005,920</u>	<u>\$1,635,249</u>	<u>\$1,524,052</u>	<u>\$6,171,429</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$1,005,920</u>	<u>\$1,635,249</u>	<u>\$1,524,052</u>	<u>\$5,868,866</u>

<u>FISCAL IMPACT -</u> <u>Local Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022	Fully Implemented (FY 2023)
	<u>\$0</u>	<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

Under current law, all classes of felonies, except those with specific minimum sentences and those involving controlled substances, are subject to statutorily required minimum prison terms. This act provides that such minimum prison terms shall only apply to certain named offenses as listed in the act.

The provisions of this act shall apply to felonies which a person pled guilty to, or was convicted of, prior to August 28, 2019.

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

SOURCES OF INFORMATION

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



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