



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: H. 3322 Introduced on January 8, 2019
Author: Pitts
Subject: Sentence Reform
Requestor: House Judiciary
RFA Analyst(s): Gardner, Miller, and Mitchell
Impact Date: March 21, 2019

Fiscal Impact Summary

The House of Representatives, the Senate, and the Judicial Department indicate that the implementation of this bill would not have an expenditure impact on the General Fund, Other Funds, or Federal Funds.

The Department of Social Services estimates that expenditures related to the development, testing, implementation, and maintenance of the information technology solution for data matching and sharing between the agency and the Department of Probation, Parole and Pardon Services would total \$200,000. These costs are comprised of \$103,000 in General Fund expenditures and \$97,000 in Federal Fund expenditures. The department further indicates that the bill may increase the assignment of public benefits. The number of individuals who currently receive public assistance who are in compliance with or are in violation of probation, parole, or community supervision requirements is unknown. As such, the impact of the bill on Federal Funds for the assignment of public benefits is undetermined.

The Commission on Prosecution Coordination indicates that the bill will shift the cost of managing offenders currently housed in state correctional facilities to solicitors, courts, local law enforcement, and the Department of Probation, Parole and Pardon Services. Any expenditure impact beyond the additional \$3,000,000 to \$5,400,000 in recurring General Funds that will be needed by the commission to operate statewide drug courts cannot be estimated.

The Commission on Indigent Defense reports that as the bill is likely to reduce case disposition time, it will result in a minimal expenditure impact and can be managed using current General Fund resources of the agency.

The Department of Corrections estimates that sentence reductions will reduce the average daily inmate population (ADP) with drug-related violations gradually over time to a maximum of 219 inmates by the year 2040. By 2029, the ADP with drug-related violations will be lower by 181 inmates than it would be under existing law, generating a cost savings of \$2,972,728. By the 2049, the cumulative cost savings from the reduction in the prison population will be \$9,501,674. The bill will also reduce ADP with a "no parole offense" gradually over time to a maximum of 2,156 inmates by the year 2062. By 2029 the ADP will be lower by 741 inmates, generating a cost savings of \$8,746,208. By 2039, the cumulative cost savings from the reduction in the prison population will be \$49,360,183.

In estimating the local expenditure, the \$61.18 average daily cost for an inmate in a county jail was extrapolated to the additional 32 jails operated by local sheriffs' offices. In FY 2018-19, there were 17,790 offenders who had at least one violation of a supervision program who received an administrative sanction. As such, it is expected that the cost of housing parolees and probationers issued a minimum administrative sanction of 3 days will cost \$3,265,176 ($\$61.18 \times 17,790 \times 3 = \$3,265,176$).

The expenditure impact estimate from the Department of Probation, Parole and Pardon Services is pending, as the agency is still reviewing the bill.

Explanation of Fiscal Impact

Introduced on January 8, 2019

State Expenditure

This bill amends a significant number of criminal law statutes, including those related to supervision of offenders, restitution, revocations, and parole proceedings; minimum sentences and penalty provisions; and drug courts. The bill will immediately parole inmates incarcerated for specific non-violent offenses. It will also require courts to consider the financial resources of defendants before ordering restitution and will require restitution payment schedules to be developed. Additionally, the bill will limit revocation of probation when inmates who are currently on probation commit probation violations of a technical nature. Parole will be made available to inmates who are terminally ill, geriatric, or permanently disabled, and inmates having served fifteen years of their sentences may petition the court for sentence modification.

The bill contains a comprehensive sentencing reform section wherein mandatory minimum sentences for over 275 criminal offenses are removed. These offenses include but are not limited to, agricultural affairs, alcohol, banking, business licensing and operation, contraband in detention facilities, drivers' licenses, drugs, education, elections, environmental affairs, fire codes, fireworks, fishing, food safety, fraud, guns, hunting, inmates, larceny, juveniles, law enforcement, marriage, mining, motor vehicles, public funds, product labeling, professional licensing and practices, public officials, public service, riots, robbery, sex crimes, trains and railroad operations, utility operations, vandalism, and other existing criminal statutes.

The bill also requires each solicitor to create separate adult and juvenile drug court programs and to establish criteria for the eligibility of defendants for those courts. The option to participate in drug courts shall be made available to those persons charged with non-violent offenses. Each drug court must employ a drug court program coordinator, and the Commission on Prosecution Coordination must establish a state Office of Drug Coordination. The state office must develop a fee schedule for drug court program participation and annually file with the Sentencing Reform Oversight Committee a report detailing drug court program activities. The bill also establishes procedures for appointing and paying drug court judges.

House of Representatives and Senate. Section 6 of this bill directs the Sentence Reform Oversight Committee to study and review the collection of restitution and submit an annual report to the General Assembly. Revenue and Fiscal Affairs (RFA) assumes that the annual date this report must be submitted to the General Assembly, as well as the proviso reference for the

establishment of the Sentence Reform Oversight Committee, will be updated by the Legislative Council in future amendments to the bill. The Sentence Reform Oversight Committee consists of eleven members, four members from the Senate, four members from the House, one member who does not serve in the Senate but is appointed by the Senate, one member who is not a member of the House but is appointed by the House, and one member appointed by the Governor's Office. Any additional staffing needs will be managed by the House and Senate.

Each member of the committee will receive a per diem of \$35, a subsistence amount of \$208.27, and a mileage amount of \$0.58 per mile for each required committee meeting occurring on non-session days. These expenses will be managed within the budgets of the appointees' respective legislative bodies. Additionally, staffing for this committee will be provided by the General Assembly and managed using current staff and existing appropriations. Absent a significant increase in the number of meetings required of this committee, the bill will not have an expenditure impact on the General Fund, Other Funds, or Federal Funds for the Senate or the House of Representatives.

Judicial Department. The department reports that statutory changes will impact caseloads in magistrate, municipal, and general sessions courts, but it is unclear whether they will result in more full trials or more guilty pleas. Therefore, the impact on the resources of these court systems cannot be determined at this time. The department anticipates that any additional costs for general sessions courts resulting from this bill will be absorbed by the General Fund related to the Judicial Department.

Commission on Prosecution Coordination. This bill provides prison sentencing reform and either decreases or increases prison time depending on the types of convictions. For inmates convicted of certain offenses, reduced sentencing can be retroactive which will require the Department of Probation, Parole and Pardon Services to conduct a review of cases to determine which inmates are eligible for immediate parole consideration or release. These reviews will impose additional burdens on prosecutors and may require court hearings, which would increase caseloads and potentially create a backlog for the courts. Every early release provided for by the bill will require notification of victims affected by the inmates to be released. Though the entity responsible for providing victim notification has not been identified by the bill, that entity will use additional resources and time in making such notifications. In considering research which indicates that the proliferation of criminal activity is tied to imprisonment consequences, the commission anticipates that retroactively applying reduced sentences will lead to increases in new criminal activity and will increase recidivism of prior offenders.

The Commission anticipates that costs will shift from the Department of Corrections to the local prison system, prosecutors, public defenders, and judges due to increased recidivism and less time spent in rehabilitation. The bill may also allow for the release of some inmates who have not engaged in rehabilitation programs prior to their release. The commission also anticipates the bill's sentence reductions may increase the number of non-violent offenders that opt for time in prison in lieu of a diversion program providing treatment and support.

The commission indicates it supports drug courts and other prison diversion programs, specifically those programs having treatment components. However, the expansion of drug

courts from one court per circuit to one per county would significantly increase costs for the commission. Each drug court costs approximately \$180,000 annually to operate. Currently, each of the 16 judicial circuits receives from \$88,000 to \$397,000 in General Funds and Other Funds revenue, of which the portion collected from court-run conditional discharge programs varies between \$18,000 and \$76,000. The commission reports that even in the judicial circuits receiving the highest allocations from conditional discharge fees, there is not sufficient state funding provided to cover the cost of operating the current drug courts. Depending on the proximity of the counties within a circuit and the workload that each county would incur, a drug court may not be practical in every county. Excluding possible cost savings associated with combining certain staff responsibilities to one or more counties per circuit where practical, the operation of a drug court in every county would require an increase of approximately \$3,000,000 to \$5,400,000 in annual recurring General Funds.

The commission maintains that the bill will shift the cost of managing offenders currently housed in state correctional facilities to solicitors, courts, local law enforcement, and the Department of Probation, Parole and Pardon Services. Any expenditure impact beyond the additional \$3,000,000 to \$5,400,000 in recurring General Funds needed by the commission to operate statewide drug courts cannot be estimated.

Commission on Indigent Defense. The commission indicates that the implementation of this bill will have a minimal expenditure impact on the General Fund, Other Funds, or Federal Funds. The agency indicates that removing mandatory minimum sentences will likely increase the speed with which certain cases can be disposed.

Department of Corrections. The bill increases prison sentences for a significant number of offenses. However, as many of these offenses are punishable by a fine in lieu of prison time, the bill is not expected to substantially increase the inmate population at state correctional facilities. The department will manage any additional costs associated with implementation of the bill using current General Fund resources.

Department of Probation, Parole and Pardon Services. A determination of the bill's expenditure impact is pending, as the agency is still reviewing the bill.

Department of Social Services. The bill requires the department to ensure eligibility for temporary assistance for needy families and federal food assistance for individuals who complete prison sentences and comply with probation, parole, or community supervision requirements, provided that all other eligibility requirements are met. Currently, department staff verify conviction information with the South Carolina Judicial Department when determining assistance program eligibility. If a client or household member does not have a felony drug-related conviction issued after August 22, 1996, he is eligible for public assistance.

The bill also requires the department to develop a data exchange system with the Department of Probation, Parole and Pardon Services to evaluate client compliance with probation, parole, and community supervision requirements for the purposes of determining eligibility for continued public assistance. In 2017, the department completed a similar data exchange project with the National Directory of New Hires. This project sustained non-recurring expenditures of

\$200,000. The department estimates that expenditures related to the development, testing, implementation, and maintenance of the new data exchange program with the Department of Probation, Parole and Pardon Services would also total \$200,000. As such, the bill is expected to increase the agency's General Fund expenditures by \$103,000 and its Federal Fund expenditures by \$97,000.

The department further indicates that the bill may increase the assignment of public benefits. The number of individuals who currently receive public assistance who are in compliance with or are in violation of probation, parole, or community supervision requirements is unknown. As such, the impact of the bill on Federal Funds for the assignment of public benefits is undetermined.

State Revenue

Department of Corrections. This comprehensive bill is expected to reduce the prison population, particularly with regard to inmates who have been convicted of a "no parole offense," who would now be eligible for release after serving 65 percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work, education, or good conduct credits and must be applied to the actual term of imprisonment imposed minus any portion of the sentence which has been suspended. In addition, the bill increases the rate at which good conduct credits may be earned from 3 to 6 days for each month served, and it increases the rate at which earned work or education credits may be earned from 6 to 12 days for each month served. The maximum annual credit for both work and education credits would also be increased from 72 to 144 days.

For the purposes of this fiscal impact statement, the department has provided cost savings analyses for the components of the bill that will have the greatest potential impact on the prison population, including the following:

- In FY 2017-18, 822 offenders with a "no parole offense" were admitted to state correctional facilities and received an average sentence of 13.1 years of imprisonment. Provided that all other factors remain the same, the bill will reduce the ADP gradually over time to a maximum of 2,156 inmates by the year 2062. By 2029 the ADP will be lower by 741 inmates, generating a cost savings of \$8,746,208. By 2039, the cumulative cost savings from the reduction in the prison population will be \$49,360,183. These figures do not include considerations for reduced staffing, as the number of staff vacancies is expected to remain high during the implementation period.
- The bill removes minimum sentences for a considerable number of offenses and reduces maximum penalties for drug offenses. During FY 2017-18, state correctional facilities admitted 995 offenders whose most severe offense was a drug-related violation or who had a sentence imposed that was greater than the maximum penalties provided for under the bill. Of those inmates, 105 of them would be eligible to have their maximum sentences reduced. These sentence reductions are estimated to reduce the ADP gradually over time to a maximum of 219 inmates by the year 2040. By 2029, the ADP will be lower by 181 inmates, generating a cost savings of \$2,972,728. By 2039, the cumulative cost savings from the reduction in the prison population will be \$9,501,674. These

figures do not include considerations for reduced staffing, as the number of staff vacancies is expected to remain high during the implementation period.

Other provisions of the bill that are expected to have a lesser financial impact and for which no cost analysis was provided by the department include the following components, each of which is related to shortening the amount of time it takes certain inmates to reach parole eligibility. As these provisions are new, there is no data with which to estimate the amount of any costs savings that may be generated.

- An inmate's active incarcerative sentence, minus any suspended portion, is to be used in computing his parole eligibility. This will reduce the amount of time it takes certain inmates to reach parole eligibility.
- An offender convicted of a non-violent or non-sex offense who is eligible for parole must be granted parole if he meets the conditions of having an assigned intake case plan (a requirement that is waived if he has not been assigned such a plan), not requesting a hearing, not being convicted of or pleading guilty to a Level 1 or Level 2 disciplinary action within 12 months prior to his parole eligibility date, agreeing to supervision, and having a discharge plan approved by the board of the Department of Probation, Parole and Pardon Services.
- Inmates who are terminally ill or geriatric and have completed 50 percent of their sentences may now be granted parole upon petition at the age of 60 years instead of 70 years. Inmates incarcerated for domestic violence or criminal sexual conduct offenses are not eligible. The 50 percent service time must be calculated without the application of any credits earned by the inmate. These provisions apply to all inmates, regardless of the offense committed and must include those sentenced for a "no parole offense." The only exceptions are for inmates who are serving life without parole sentences or are serving sentences for a second or subsequent violent crime conviction. These provisions are not necessarily retroactive for inmates convicted of a "no parole offense." Inmates who petition for parole under this section may not be considered for parole under a new section of law that would allow an inmate to petition for parole after he has been incarcerated for at least a continuous 15 year period. These provisions also apply to inmates serving a life with parole sentence, wherein the 50 percent service time calculation will be based on a sentence of 30 years.
- An inmate convicted of a "no parole offense" who has served at least 65 percent of his sentence and has either completed a rehabilitation or education program or has exhibited exemplary conduct may petition the sentencing judge for a sentence modification. The department is unable to estimate the number of inmates who would receive modified sentences under this provision.

Local Expenditure

This bill provides that administrative sanctions may be issued to parolees and probationers who violate conditions of community supervision programs. The administrative sanctions must include jail time consisting of a maximum of 3 days confinement for a first jail sanction and a

maximum of 10 days confinement for a second jail sanction. The confinement sanctions may be served on weekends.

Lancaster and Florence Counties and the South Carolina Association of Counties (SCAC) provided responses on the potential expenditure impact of the bill. Both entities indicated that, due to work schedules for parolees and probationers, they expect that most who must serve confinement sanctions will choose to serve those times on the weekends. As local law enforcement agencies have the highest occupancy rates on weekends, overcrowding may occur at local jails during those times as a result of the bill.

In considering the overall fiscal impact of the bill, the SCAC conferred with the South Carolina Jail Administrators Association to survey the 12 county jails to determine the average daily cost of housing an inmate, which was calculated as \$61.18 (not including healthcare or medical costs). For the purposes of this fiscal impact determination, the \$61.18 average daily cost for an inmate in a county jail was extrapolated to the additional 32 jails operated by local sheriffs' offices. In FY 2018-19, there were 17,790 offenders who had at least one violation of a supervision program who received an administrative sanction. As such, it is expected that the cost of housing parolees and probationers issued a minimum administrative sanction of 3 days will cost \$3,265,176 ($\$61.18 \times 17,790 \times 3 = \$3,265,176$).

The expenditure impact for local jails may exceed this amount should offenders be issued the maximum sanction amount of 10 days of confinement. As there is no data available to determine which offenders would receive the maximum confinement time of 10 days for administrative sanctions, the maximum expenditure impact for local and municipal governments is undetermined.

Local Revenue

N/A



Frank A. Rainwater, Executive Director