



2013 BILL

1 **AN ACT** *to create* 13.0995 of the statutes; **relating to:** requiring racial impact
2 statements for bills that create a new crime, modify an existing crime, or modify
3 the penalty for an existing crime.

Analysis by the Legislative Reference Bureau

This bill provides that any bill that creates a new crime, modifies an existing crime, or modifies the penalty for an existing crime must have a racial impact statement. The racial impact statement must be prepared by the Joint Review Committee on Criminal Penalties (JRCCP). Under the bill, JRCCP may obtain the assistance of any agency in the executive branch of state government in preparing the racial impact statement.

The bill requires that a racial impact statement include an estimate of the number of criminal cases per year that the bill will affect, the impact of the bill on members of racial minority groups, the effect of the bill on the operations of correctional institutions, and any other matter JRCCP considers appropriate. In preparing the racial impact statement, JRCCP must also issue a finding as to whether the bill has a disparate impact on members of racial minority groups. The racial impact statement must be printed as an appendix to the bill and distributed in the same manner as amendments.

Under the bill, if JRCCP finds that a bill will have a disparate impact on members of racial minority groups, the author of the bill must either offer an amendment to the bill to reduce the disparate impact of the bill on members of racial minority groups or provide in writing his or her reasons for advancing the bill

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without amendment despite the disparate impact of the bill on members of racial minority groups.

Finally, under the bill, no house of the legislature may pass a bill that creates a new crime, modifies an existing crime, or modifies the penalty for an existing crime without a racial impact statement and without any applicable actions required of the bill's author.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.0995 of the statutes is created to read:

2 **13.0995 Racial impact statements.** (1) Any bill that creates a new crime,
3 modifies an existing crime, or modifies the penalty for an existing crime shall carry
4 a racial impact statement.

5 (2) The racial impact statement shall be prepared by the joint review committee
6 on criminal penalties. The joint review committee on criminal penalties may obtain
7 the assistance of any agency in the executive branch of state government in
8 preparing the racial impact statement. If requested for assistance, an agency shall
9 promptly provide all necessary information to the joint review committee on criminal
10 penalties.

11 (3) The racial impact statement shall include an estimate of the number of
12 criminal cases per year that the bill will affect, the impact of the bill on members of
13 racial minority groups, the effect of the bill on the operations of correctional
14 institutions, and any other matter the joint review committee on criminal penalties
15 considers appropriate. In preparing the racial impact statement, the joint review
16 committee on criminal penalties shall issue a finding as to whether the bill has a
17 disparate impact on members of racial minority groups. The racial impact statement

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1 shall be printed as an appendix to the bill and shall be distributed in the same
2 manner as amendments.

3 (4) After a proposed bill has been drafted, the legislative reference bureau shall
4 inform the requester if a racial impact statement is required when it submits the
5 draft to the requester. A bill that requires a racial impact statement shall have the
6 requirement noted on the jacket when the jacket is prepared.

7 (5) If the joint review committee on criminal penalties finds that a bill will have
8 a disparate impact on members of racial minority groups, the author of the bill shall
9 do either of the following:

10 (a) Offer an amendment to the bill to reduce the disparate impact of the bill on
11 members of racial minority groups. If the author offers such an amendment, the
12 author shall identify in writing how the amendment would reduce the disparate
13 impact of the bill on members of racial minority groups. The written document shall
14 be distributed in the same manner as amendments.

15 (b) Provide in writing his or her reasons for advancing the bill without
16 amendment despite the disparate impact of the bill on members of racial minority
17 groups. The written document shall be printed as an appendix to the bill and shall
18 be distributed in the same manner as amendments.

19 (6) No house of the legislature may pass a bill that creates a new crime,
20 modifies an existing crime, or modifies the penalty for an existing crime without a
21 racial impact statement prepared under sub. (2) and, if applicable, without an action
22 of the author of the bill under sub. (5).

23 (END)

1 By Supervisor Rainey

2 **A RESOLUTION**

3
4 to develop a Minority Impact Statement Ordinance for all Milwaukee County
5 resolutions, contracts and grants greater than \$300,000
6

7
8 WHEREAS, Minority Impact Statement ordinances have been established in
9 Iowa and Connecticut; and
10

11 WHEREAS, Milwaukee County is the largest populated and most ethnically
12 diverse county in the State; and
13

14 WHEREAS, the Census Bureau in 2011 indicates that 41 percent of African
15 Americans and 35 percent of Latinos living in Milwaukee are impoverished; and
16

17 WHEREAS, Forbes Magazine March 2011 edition listed Milwaukee Metropolitan
18 Area as 52nd among 52 cities in the United States for Minority Entrepreneurship; and
19

20 WHEREAS, the April 2010 U.S. Census Bureau decennial count found that 1 in
21 8 African American working age men are in the State prison system, accounting for a
22 12.8 percent of incarceration rate, while the national average is 6.7 percent or 1 in 15;
23 and
24

25 WHEREAS, 15.2 percent, or 127,930 of the Milwaukee County population has
26 some type of disability according to Disability Planning Data.com; and
27

28 WHEREAS, a recent study by Olson & Associates titled "The Face of Aging in
29 Milwaukee County" estimates that 16.9 percent of the population in Milwaukee County
30 is 60 or older with;
31

32 WHEREAS, minorities age 65 or older are more likely to live in poverty, which
33 includes the following rates: Blacks/African American 20.1 percent, American
34 Indian/Alaskan 25.0 percent, Hispanics/Latinos 19.4 percent, Pacific Islander 26.3
35 percent; although the rate for Caucasians is only 6.7 percent; and
36

37 WHEREAS, the April 2010 U.S. Census Bureau decennial count found that 1 in
38 7 Native American men of working age men are in the State prison system, accounting
39 for a 7.6 percent incarceration rate, while the national average is 6.7 percent or 1 in 15;
40 and

41 WHEREAS, the development of a minority impact statement process would
42 ensure that at-risk minority populations are carefully considered when expending
43 taxpayer resources; now, therefore,
44

45 BE IT RESOLVED, that the County Board supports the requirement that all
46 resolutions, grants and contracts with a fiscal impact greater than \$300,000 include a
47 completed Minority Impact Statement prior to Milwaukee County Board approval; and
48

49 BE IT FURTHER RESOLVED, that the minority impact statement shall explain
50 qualitative and quantitatively the positive and/or negative impact the legislation, grant or
51 contract may have on the following groups:
52

- 53 • Women
- 54 • African-American and Blacks,
- 55 • Hispanics/Latinos
- 56 • Asian and Pacific Islanders
- 57 • Native Americans and Alaskan Natives
- 58 • Elderly, over 65
- 59 • Disabled

60
61 ; and
62

63 BE IT FURTHER RESOLVED, that the Director of the Office of Community
64 Business Development Partners, working in conjunction with the Corporation Counsel,
65 shall develop a recommended ordinance and related procedures to formally implement
66 the aforementioned minority impact statement requirement for consideration by the
67 County Board no later than the March 2014 meeting cycle.

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: S3/28/13

A Bill

SENATE BILL 1093

5 By: Senator Elliott
6 By: Representatives H. Wilkins, Love
7

For An Act To Be Entitled

9 AN ACT TO REQUIRE THE PREPARATION OF A RACIAL IMPACT
10 STATEMENT FOR CERTAIN BILLS FILED WITH THE SENATE AND
11 HOUSE OF REPRESENTATIVES; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO REQUIRE THE PREPARATION OF A RACIAL
16 IMPACT STATEMENT FOR CERTAIN BILLS FILED
17 WITH THE SENATE AND HOUSE OF
18 REPRESENTATIVES.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code Title 10, Chapter 2, Subchapter 1 is amended
24 to add an additional section to read as follows:

25 10-2-132. Racial impact statement.

26 (a)(1) A racial impact statement shall be prepared as provided in this
27 section for any bill filed in the Senate or House of Representatives that
28 will:

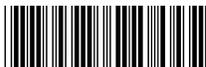
29 (A) Create a new offense;

30 (B) Significantly change an existing offense;

31 (C) Change the penalty for an existing offense; or

32 (D) Change existing sentencing, parole, or probation
33 procedures.

34 (2) A racial impact statement shall be prepared and filed with
35 the chair of the committee to which the bill is referred before the bill is
36 heard in the committee during a regular, fiscal, or special session of the



1 General Assembly.

2 (3) If a bill requiring a racial impact statement is amended, a
3 revised racial impact statement shall be prepared for the bill.

4 (b)(1)(A) Except as provided in subdivision (b)(1)(B) of this section,
5 the Office of Economic and Tax Policy, with the assistance of the Department
6 of Criminal Justice at the University of Arkansas at Little Rock, shall
7 prepare the racial impact statement required by this section.

8 (B) The Office of Economic and Tax Policy, with the
9 assistance of the Arkansas Coalition for Juvenile Justice and the Department
10 of Criminal Justice at the University of Arkansas at Little Rock, shall
11 prepare a racial impact statement for a bill under subdivision (a)(1) of this
12 section that has an impact on minors.

13 (2) The racial impact statement shall include without
14 limitation:

15 (A) The estimated number of criminal cases per year that
16 the bill will affect;

17 (B) The impact of the bill on a minority as defined in §
18 1-2-503;

19 (C) The impact of the bill upon correctional facilities
20 and services; and

21 (D) Other matters deemed relevant to the bill at issue.

22 (c)(1)(A) If a racial impact statement indicates a disparate impact on
23 a minority as defined in § 1-2-503, the sponsor of the bill shall consider
24 whether the bill may be amended to achieve its purpose with a lessened impact
25 on minorities.

26 (B) If a bill is amended to lessen its impact on
27 minorities the sponsor of the bill shall identify in writing, in the bill and
28 the racial impact statement, the methodology used to lessen the impact on
29 minorities in the amended proposal.

30 (2) If the sponsor of the bill elects not to amend the bill or
31 if the racial impact statement for an amended bill continues to indicate a
32 disparate impact on a minority, the sponsor of the bill shall:

33 (A) Withdraw the bill; or

34 (B) Identify in writing, in the bill and the racial impact
35 statement, his or her reasoning for proceeding with the bill despite the
36 disparate impact.

Judiciary Committee

Appropriations Committee

AN ACT CONCERNING THE COMPENSATION OF WRONGFULLY CONVICTED AND INCARCERATED PERSONS, THE DUTIES AND DURATION OF THE SENTENCING TASK FORCE AND THE PREPARATION OF RACIAL AND ETHNIC IMPACT STATEMENTS

SUMMARY: This act authorizes certain people convicted in state court and sentenced to a term of imprisonment to present a claim against the state with the claims commissioner for compensation for wrongful conviction. The act requires that they follow the procedures in place for filing a claim against the state.

The act requires the Advisory Commission on Wrongful Convictions to monitor and evaluate the implementation of (1) the procedure the act establishes for compensating wrongfully incarcerated persons; (2) the pilot program to electronically record interrogations of arrested persons; and (3) eyewitness identification procedures that, when practicable, use a double-blind administration. The act specifies that a double-blind administration occurs when the person conducting the identification procedure is not aware of which person in the photo or live lineup is suspected as being the perpetrator of the crime. The commission must report its findings and recommendations to the Judiciary Committee by January 7, 2009.

The act also requires that beginning with the 2009 session of the General Assembly, a racial and ethnic impact statement be prepared for certain bills and amendments that could, if passed, increase or decrease the pretrial or sentenced prison population. It also requires that by January 1, 2009, the Judiciary Committee recommend a joint legislative rule on the procedure for preparing the statements, their content, and the types of acts and amendments for which they should be prepared.

Finally, the act extends the reporting deadline for the Connecticut Sentencing Task Force from December 1, 2008 to July 1, 2009. It also requires the task force to recommend, by January 7, 2009, whether to establish a permanent sentencing commission and, if so, the permanent commission's mission, duties, membership, and procedures. The 28-member task force was established in 2006 to review the state's criminal justice and sentencing policies.

EFFECTIVE DATE: October 1, 2008, except for the provisions concerning the sentencing task force and the racial and ethnic impact statements, which take effect on passage.

COMPENSATION FOR THE WRONGFULLY CONVICTED

Scope of Law

The act applies only to those:

1. who served all or part of their sentence;
2. who were innocent of the crime or crimes of which they were convicted; and
3. whose convictions were vacated or reversed and whose cases were dismissed on grounds of innocence, or on a ground consistent with innocence.

Burden and Standard of Proof

The act gives the person filing the claim the burden of establishing, by a preponderance of the evidence, to the claims commissioner that he or she meets the act's eligibility requirements. In addition, the act requires the claimant to present evidence of damages arising from, or related to, the claimant's arrest, prosecution, conviction, and incarceration. If the claims commissioner determines, by a preponderance of the evidence, that the claimant is eligible, he must order the immediate payment of compensation for the wrongful incarceration.

The act specifies factors the commissioner must consider when determining the amount of compensation and additional amounts he may award for certain training and other specified services.

Deadline for Filing Claims

The act requires people to file any claim based on a pre-October 1, 2008 pardon or dismissal by September 30, 2010. They must file any claim based on a pardon or dismissal that occurred on or after October 1, 2008 within two years after the pardon or dismissal.

Damages

The act specifies that the evidence of damages that the claimant presents may include claims for:

1. loss of liberty and enjoyment of life, earnings and earning capacity, familial relationships, and reputation;
2. physical pain and suffering;
3. mental pain and suffering; and
4. attorney's fees and other expenses arising from or related to the arrest, prosecution, conviction, and incarceration.

Amount of Compensation Awarded

In determining the amount of compensation, the claims commissioner must consider relevant factors, including: (1) the evidence the claimant presented concerning the damages he or she suffered and (2) whether any negligence or misconduct by any officer, agent, employee, or official of the state or any political subdivision of the state contributed to the person's arrest, prosecution, conviction, or incarceration.

The act authorizes the commissioner to pay additional amounts for any other services a wrongfully convicted person may need to facilitate his or her reintegration into the community, including:

1. the expenses of employment, training , and counseling and
2. tuition and fees at any constituent unit of the state system of higher education.

Other Remedies

The act specifies that it may not be interpreted to prevent someone from pursuing any other action or that he or she may have against the state and any political subdivision of the state and any officer, agent, employee, or official arising out of the wrongful conviction and incarceration.

BACKGROUND

Claims Commissioner

Generally, the law requires those who wish to sue the state, or to present a claim against it, to file a claim with the claims commissioner unless their case falls within an exception established by law. They must file their claim with the commissioner within one year after it accrues. A claim accrues on the date the damage or injury is sustained or discovered or, in the exercise of reasonable care, should have been discovered. But, the law requires that the claim be submitted within three years after the date of the act or event that allegedly caused the damages (CGS § 4-148).

Advisory Commission on Wrongful Convictions

The chief court administrator established an advisory commission to review any criminal or juvenile case involving a wrongful conviction and recommend reforms to lessen the likelihood of a similar wrongful conviction occurring in the future. The advisory commission consists of the chief state's attorney, the chief public defender, and the victim advocate, or their designees; a representative from the Connecticut Police Chiefs Association; a representative from the Connecticut Bar Association; and representatives from one or more Connecticut law schools or institutions of higher education that offer undergraduate programs in criminal justice and forensic science (CGS § 54-102pp).

Related Laws

SA 07-5 required the comptroller to pay James Calvin Tillman \$5 million as full and final settlement of all claims he has against the state; any political subdivision of the state; and any state or local officer, agent, employee, or official, arising out of, or in any way related to, his arrest, prosecution, conviction, and incarceration from 1988 to 2006 for the crimes of kidnapping and sexual assault, which he did not commit. It exempted any payment he receives under the act from the state income tax. PA 07-04, June Special Session specified that this settlement is also exempt from claims or liens for incarceration costs that the law authorizes the state to recover from inmates.

OLR Tracking: GC:SP:JL:ts



Substitute House Bill No. 5933

Public Act No. 08-143

AN ACT CONCERNING THE COMPENSATION OF WRONGFULLY CONVICTED AND INCARCERATED PERSONS, THE DUTIES AND DURATION OF THE SENTENCING TASK FORCE AND THE PREPARATION OF RACIAL AND ETHNIC IMPACT STATEMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2008*) (a) A person is eligible to receive compensation for wrongful incarceration if:

(1) Such person has been convicted by this state of one or more crimes, of which the person was innocent, has been sentenced to a term of imprisonment for such crime or crimes and has served all or part of such sentence; and

(2) Such person's conviction was vacated or reversed and the complaint or information dismissed on grounds of innocence, or the complaint or information dismissed on a ground consistent with innocence.

(b) A person who meets the eligibility requirements of subsection (a) of this section may present a claim against the state for such compensation with the Claims Commissioner in accordance with the provisions of chapter 53 of the general statutes. The provisions of said chapter shall be applicable to the presentment, hearing and

Substitute House Bill No. 5933

determination of such claim except as otherwise provided in this section.

(c) At the hearing on such claim, such person shall have the burden of establishing by a preponderance of the evidence that such person meets the eligibility requirements of subsection (a) of this section. In addition, such person shall present evidence as to the damages suffered by such person which may include, but are not limited to, claims for loss of liberty and enjoyment of life, loss of earnings, loss of earning capacity, loss of familial relationships, loss of reputation, physical pain and suffering, mental pain and suffering and attorney's fees and other expenses arising from or related to such person's arrest, prosecution, conviction and incarceration.

(d) If the Claims Commissioner determines that such person has established such person's eligibility under subsection (a) of this section by a preponderance of the evidence, the Claims Commissioner shall order the immediate payment to such person of compensation for such wrongful incarceration. In determining the amount of such compensation, the Claims Commissioner shall consider relevant factors including, but not limited to, the evidence presented by the person under subsection (c) of this section as to the damages suffered by such person and whether any negligence or misconduct by any officer, agent, employee or official of the state or any political subdivision of the state contributed to such person's arrest, prosecution, conviction or incarceration.

(e) In addition to the compensation paid under subsection (d) of this section, the Claims Commissioner may order payment for the expenses of employment training and counseling, tuition and fees at any constituent unit of the state system of higher education and any other services such person may need to facilitate such person's reintegration into the community.

Substitute House Bill No. 5933

(f) Any person claiming compensation under this section based on a pardon that was granted or the dismissal of a complaint or information that occurred before the effective date of this section shall file such claim not later than two years after the effective date of this section. Any person claiming compensation under this section based on a pardon that was granted or the dismissal of a complaint that occurred on or after the effective date of this section shall file such claim not later than two years after the date of such pardon or dismissal.

(g) Nothing in this section shall be construed to prevent such person from pursuing any other action or remedy at law or in equity that such person may have against the state and any political subdivision of the state and any officer, agent, employee or official thereof arising out of such wrongful conviction and incarceration.

Sec. 2. (*Effective from passage*) (a) The advisory commission on wrongful convictions established pursuant to section 54-102pp of the general statutes shall monitor and evaluate the implementation of (1) the procedure for the compensation of wrongfully incarcerated persons established under section 1 of this act, (2) the pilot program to electronically record the interrogations of arrested persons, and (3) eyewitness identification procedures that, when practicable, use a double-blind administration wherein the person conducting the identification procedure is not aware of which person in the photo lineup or live lineup is suspected as being the perpetrator of the crime.

(b) Not later than January 7, 2009, the advisory commission shall report its findings and recommendations to the joint standing committee of the General Assembly on judiciary in accordance with section 11-4a of the general statutes.

Sec. 3. Subsection (d) of section 6 of public act 06-193 is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Substitute House Bill No. 5933

(d) The task force shall:

(1) Identify overarching criminal justice and sentencing goals and policies;

(2) Define current sentencing models including sentencing guidelines, criteria, exemptions and enhancements;

(3) Analyze sentencing trends by offense types and offender characteristics;

(4) Review the actual versus intended impact of sentencing policies;

(5) Determine the direct and indirect costs associated with sentencing policies;

(6) Review the fines and terms of imprisonment specified for violations of criminal statutes that are classified or unclassified felonies or misdemeanors and make recommendations including, but not limited to: (A) Whether crimes that are currently unclassified should be classified; (B) whether certain classified crimes should be reclassified or the penalties for certain unclassified crimes should be revised in order to make the penalties for similar crimes more uniform; (C) whether the penalty or type of penalty for certain crimes should be revised or eliminated where such penalty or type of penalty is no longer deemed necessary or appropriate or is disproportionate to the severity of the crime; and (D) whether crimes that are obsolete should be repealed; [and]

(7) Make any recommendations for the revision of criminal justice and sentencing policies as deemed necessary; and

(8) Not later than January 7, 2009, make a recommendation as to whether a permanent sentencing commission should be established and, if so, make recommendations concerning the mission, duties,

Substitute House Bill No. 5933

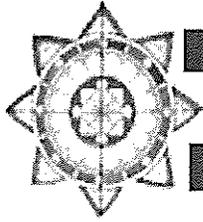
membership and procedures of such a commission.

Sec. 4. Subsection (g) of section 6 of public act 06-193 is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(g) The task force shall report its findings and recommendations to the joint standing committee of the General Assembly on the judiciary in accordance with section 11-4a of the general statutes not later than [December 1, 2008] July 1, 2009. The task force shall terminate upon the completion of its duties.

Sec. 5. (NEW) (*Effective from passage*) (a) Beginning with the session of the General Assembly commencing on January 7, 2009, a racial and ethnic impact statement shall be prepared with respect to certain bills and amendments that could, if passed, increase or decrease the pretrial or sentenced population of the correctional facilities in this state.

(b) Not later than January 1, 2009, the joint standing committee of the General Assembly on judiciary shall make recommendations for a provision to be included in the joint rules of the House of Representatives and the Senate concerning the procedure for the preparation of such racial and ethnic impact statements, the content of such statements and the types of bills and amendments with respect to which such statements should be prepared.



CONNECTICUT GENERAL ASSEMBLY

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Joint Rules

RESOLUTION CONCERNING THE JOINT RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.

Resolved by this Assembly:

That the following shall be the Joint Rules of the Senate and House of Representatives for the regular sessions of the General Assembly and for interim periods during the 2013-2014 legislative term.

LEGISLATIVE COMMISSIONERS' PROCESS AFTER COMMITTEE ACTION

13. (a) Receipt. When a committee reports a bill or resolution favorably it shall be submitted forthwith to the Legislative Commissioners' Office which shall immediately enter the receipt of the bill or resolution in the legislative database and notify the Office of Fiscal Analysis and the Office of Legislative Research of the bill or resolution number and the committee's action.

(b) Examination and Correction. The legislative commissioners shall examine the bill or resolution and make any correction therein as may be necessary for the purpose of avoiding repetition and unconstitutional provisions, and of ensuring accuracy in the text and references, clearness and conciseness in the phraseology and consistency with existing statutes. Whenever the legislative commissioners make any changes in a bill or resolution, other than corrections of spelling, grammar, punctuation or typographical errors the correction of which in no way alters the meaning, they shall prepare a statement which describes each change, where it was made, and explicitly why they made the change. This statement shall be entered into the legislative database and printed with the file copy of the bill or resolution and shall bear the same file number as the bill or resolution.

(c) Deadline. Unless the President Pro Tempore and the Speaker consent, in writing, to a request by a legislative commissioner for an extension of time, the Legislative Commissioners' Office shall complete its examination of the bill or resolution within ten calendar days, excluding holidays, after its receipt. If the bill or resolution is approved by a commissioner, the commissioner shall notify the Office of Fiscal Analysis and the Office of Legislative Research of the approval and, if a substitute, furnish each office with a copy of the bill or resolution for preparation of a fiscal note and bill analysis and, when requested pursuant to Rule 15(c)(2), a racial and ethnic impact statement. Unless the President Pro Tempore and the Speaker consent, in writing, to a request by the director of the Office of Fiscal Analysis or the director of the

Office of Legislative Research for an extension of time, a legislative commissioner shall transmit the bill or resolution with his or her approval to the clerk of the chamber in which it originated within five calendar days, excluding holidays, after such notice.

(d) Bills or Resolutions Returned to Committee. If the commissioner finds upon completion of the examination of a bill or resolution that the bill or resolution is unconstitutional or is already law, the commissioner shall return the bill or resolution to the committee and shall notify the Office of Fiscal Analysis and the Office of Legislative Research of its return. Whenever a bill or resolution has been so returned to the committee, it may nevertheless be reported favorably by the committee and be returned to the Legislative Commissioners' Office for completion of the procedures prescribed above, notwithstanding the provisions of Rule 15. If a bill or resolution is returned after the committee's reporting out date designated in the schedule shown in Rule 15, the committee shall take such action before the start of the session on the third regular session day of the chamber making the referral after the bill or resolution is returned by the Legislative Commissioners' Office. The clerk shall enter it on the calendar under a heading "Favorable Report, Matter Not Approved by Legislative Commissioner" unless the committee reports a substitute bill or resolution which the legislative commissioners approve.

(e) Change of Reference. Favorable changes of reference shall be treated as provided in this rule except that no fiscal note or bill analysis shall be required. When a committee votes a straight change of reference, the bill or resolution shall be submitted to the Legislative Commissioners' Office which shall prepare the change of reference jacket and deliver the bill or resolution to the clerk of the chamber of origin. Reading and referral of straight changes of reference shall be by printing in the House and Senate journals.

REPORTING OF BILLS OR RESOLUTIONS

14. Except as provided in Rules 19 and 20, all bills and joint resolutions reported by any committee shall be first reported to the chamber of origin, but any bill or resolution favorably reported by only one chamber shall first be reported to that chamber regardless of the chamber of origin.

FINAL COMMITTEE ACTION

15. (a) Deadline for Favorable Reports. The deadline for committees to vote to report favorably and submit bills and resolutions proposing amendments to the constitution and other substantive resolutions to the Legislative Commissioners' Office shall be 5:00 p.m. on the dates designated in the following schedule:

T6 Committee 2013 2014

T7 Aging March 12 March 13

T8 Children March 12 March 13

T9 Veterans' Affairs March 12 March 13

T10 Housing March 14 March 13

T11 Banks March 14 March 20

T12 Program Review and Investigations March 18 March 14

T13 General Law March 19 March 18
T14 Labor and Public Employees March 19 March 20
T15 Legislative Management March 20 March 17
T16 Public Safety and Security March 21 March 18
T17 Insurance & Real Estate March 21 March 20
T18 Transportation March 27 March 19
T19 Commerce March 28 March 25
T20 Higher Education and Employment Advancement
March 28
March 18
T21 Energy & Technology March 28 March 27
T22 Human Services March 28 March 25
T23 Environment April 3 March 24
T24 Education April 3 March 26
T25 Planning and Development April 3 March 26
T26 Public Health April 5 March 28
T27 Government Administration and Elections April 8 March 28
T28 Judiciary April 19 April 2
T29 Appropriations April 23 April 3
T30 Finance, Revenue and Bonding April 24 April 4

(b) Hearing Requirement for Favorable Report. Except as provided in Rule 32 (2)(A); no bill and no resolution proposing an amendment to the constitution or other substantive resolution shall be reported favorably by a committee unless a public hearing has been held as provided in Rule 6, but no further public hearing shall be required for a favorable report on a substitute for such bill or resolution, provided the substitute is based on or is germane to the subject matter of the original bill or resolution, or for a bill or resolution petitioned under Rule 11 on which a subject matter public hearing has been held.

(c) Fiscal Notes and Bill Analyses; Bills or Resolutions Unfavorably Reported; List of Reported Bills or Resolutions. (1) Any bill or resolution reported favorably by any committee which if passed or adopted, would affect state or municipal revenue or would require the expenditure of state or municipal funds, shall have a fiscal note attached, as required by section 2-24 of the general statutes with respect to bills. The fiscal note for a bill or resolution and the analysis of a bill shall be printed with the bill or resolution and shall bear the same file number as the bill or resolution. Any fiscal note printed with or prepared for a bill or resolution and any analysis of a bill printed with or prepared for a bill, are solely for the purpose of information, summarization and explanation for members of the General Assembly and shall not be construed to represent the intent of the General Assembly or either chamber thereof for any purpose. Each such fiscal note and bill analysis shall bear the following disclaimer: "The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose." When an amendment is offered to a bill or resolution in the House or the Senate, which, if adopted, would require the expenditure of state or municipal funds or affect state or municipal revenue, a fiscal note shall be available at the time the amendment is offered and, in the case of an

amendment which is substantially similar to a favorably-reported bill for which a racial and ethnic impact statement has been prepared pursuant to this rule, such fiscal note may include a copy of such impact statement. Any fiscal note prepared for such an amendment shall be construed in accordance with the provisions of this rule and shall bear the disclaimer required under this rule. Each fiscal note prepared under this subdivision shall include a brief statement of the sources of information, in addition to the general knowledge of the fiscal analyst, consulted or relied on to calculate the fiscal impact.

(2) Whenever a committee reports a bill favorably which, if passed, would increase or decrease the pretrial or sentenced population of correctional facilities in this state, a majority of the committee members present may request that a racial and ethnic impact statement be prepared. The racial and ethnic impact statement shall be prepared by the Office of Legislative Research and the Office of Fiscal Analysis, which may, in the preparation of such statement, consult with any person or agency including, but not limited to, the Judicial Branch, the Office of Policy and Management, the Department of Correction and the Connecticut Sentencing Commission. The statement shall indicate: (A) Whether the bill would have a disparate impact on the racial and ethnic composition of the correctional facility population and an explanation of that impact, (B) that it cannot be determined whether the bill would have a disparate impact on the racial and ethnic composition of the correctional facility population, or (C) that the offices cannot determine within the time limitation specified in Rule 13(c) whether the bill would have a disparate impact on the racial and ethnic composition of the correctional facility population. The racial and ethnic impact statement shall be attached to and printed with the bill and shall bear the same file number as the bill. Any racial and ethnic impact statement printed with or prepared for a bill is solely for the purpose of information, summarization and explanation for members of the General Assembly and shall not be construed to represent the intent of the General Assembly or either chamber thereof for any purpose. Each racial and ethnic impact statement shall bear the following disclaimer: "The following Racial and Ethnic Impact Statement is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose."

(3) All bills or resolutions unfavorably reported by a committee shall be submitted to the Legislative Commissioners' Office not later than 5:00 p.m. on the final reporting out date for favorable reports for that committee, designated in the schedule shown in this rule.

(4) The legislative commissioners shall prepare a list of the bills or resolutions submitted to them which at the deadline time for each committee are not printed and in the files and the clerks shall print the same in the House and Senate journals.

(d) Bills or Resolutions Not Acted on by Committee; Bills or Resolutions Not Printed and in Files. All bills or resolutions not acted on by the committees within the time limits established by this section shall be deemed to have failed in committee, except that (1) a bill or resolution shall be reported to the chamber in which it originated if the Speaker of the House and the President Pro Tempore of the Senate certify, in writing, the facts which in their opinion necessitate it being acted on by the General Assembly or (2) if a majority of the members of either chamber present to the clerk of such chamber a written petition as provided by Rule 19, requesting that a bill or

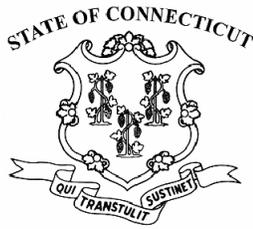
resolution be reported, it shall be reported to the chamber in which the petition originated. Any bill or resolution not printed and in the files of the members of the General Assembly may be acted upon by the General Assembly if the Speaker of the House and the President Pro Tempore of the Senate certify, in writing, the facts which in their opinion necessitate an immediate vote on the bill or resolution, in which case a copy of the bill or resolution, accompanied by a fiscal note, shall nevertheless be upon the desks of the members, but not necessarily printed, before the bill or resolution is acted upon.

(e) Bills Authorizing Conveyance of Real Property by State. Notwithstanding any provision of these rules to the contrary (1) no bill authorizing the conveyance of real property, or any interest therein, by the state of Connecticut to any person or entity shall be printed or placed on the calendar or in the files for action unless the bill has received a favorable or unfavorable report from the joint standing committee on government administration and elections, and (2) no bill which has been amended to authorize the conveyance of real property, or any interest therein, by the state of Connecticut to any person or entity shall be passed by either chamber unless such bill, as amended, has been referred to the joint standing committee on government administration and elections, and that committee has reported favorably or unfavorably on such amended bill to the chamber from which it was referred at any time thereafter but before the start of the session on the third regular session day of the chamber making the referral after the date that the motion to refer is adopted, but no later than seven calendar days after such date of adoption.

(f) Referral of Bill or Resolution by Chamber to Committee After Deadline. (1) Whenever a bill or resolution favorably or unfavorably reported by one committee is referred by the House or the Senate to another committee after its deadline under subsection (a) of this rule has passed, the committee receiving such referred bill or resolution shall meet to consider such bill or resolution on any day of the week and at any time (A) before the start of the session of the third regular session day of the referring chamber after the date that the motion to refer is adopted, or (B) not later than seven calendar days after such date of adoption, whichever occurs first. Such committee may take the following action on such referred bill or resolution: (i) report it favorably or unfavorably in accordance with the provisions of subdivisions (2) and (3) of this rule, (ii) box it, or (iii) take no action. Under no circumstances shall such committee refer such bill or resolution to another committee.

(2) If the committee reports the bill or resolution favorably or unfavorably, and the bill or resolution has not been amended in either chamber, the committee may report a substitute bill or resolution, in which case, there shall be a reprinting of the file. The entry on the calendar in both chambers shall indicate the actions of the committee.

(3) If the committee reports the bill or resolution favorably or unfavorably, and the bill or resolution has been amended in either chamber, the committee shall include in its report its recommendation on the adoption or rejection of each amendment, and may submit additional amendments to be offered on the floor. In such a case there shall be no reprinting of the file. The entry on the calendar in both chambers shall indicate the actions and recommendations of the committee.



House of Representatives

General Assembly

File No. 732

January Session, 2009

Substitute House Bill No. 6581

House of Representatives, April 20, 2009

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 21a-267 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) No person shall use or possess with intent to use drug
4 paraphernalia, as defined in subdivision (20) of section 21a-240, to
5 plant, propagate, cultivate, grow, harvest, manufacture, compound,
6 convert, produce, process, prepare, test, analyze, pack, repack, store,
7 contain or conceal, or to ingest, inhale or otherwise introduce into the
8 human body, any controlled substance as defined in subdivision (9) of
9 section 21a-240. Any person who violates any provision of this
10 subsection shall be guilty of a class C misdemeanor.

11 (b) No person shall deliver, possess with intent to deliver or
12 manufacture with intent to deliver drug paraphernalia knowing, or

13 under circumstances where one reasonably should know, that it will
14 be used to plant, propagate, cultivate, grow, harvest, manufacture,
15 compound, convert, produce, process, prepare, test, analyze, pack,
16 repack, store, contain or conceal, or to ingest, inhale or otherwise
17 introduce into the human body, any controlled substance. Any person
18 who violates any provision of this subsection shall be guilty of a class
19 A misdemeanor.

20 (c) Any person who violates subsection (a) or (b) of this section in or
21 on, or within [one thousand five hundred feet] two hundred feet of the
22 perimeter of, the real property comprising a public or private
23 elementary or secondary school during regular school hours or the
24 hours of any school-sponsored activity conducted on such property
25 where students are present and who is not enrolled as a student in
26 such school shall be imprisoned for a term of one year, which [shall not
27 be suspended and] shall be in addition and consecutive to any term of
28 imprisonment imposed for violation of subsection (a) or (b) of this
29 section.

30 Sec. 2. Section 21a-278a of the general statutes is repealed and the
31 following is substituted in lieu thereof (*Effective October 1, 2009*):

32 (a) Any person eighteen years of age or older who violates section
33 21a-277 or 21a-278, and who is not, at the time of such action, a drug-
34 dependent person, by distributing, selling, prescribing, dispensing,
35 offering, giving or administering any controlled substance to another
36 person who is under eighteen years of age and is at least two years
37 younger than such person who is in violation of section 21a-277 or 21a-
38 278, shall be imprisoned for a term of two years, which shall not be
39 suspended and shall be in addition and consecutive to any term of
40 imprisonment imposed for violation of section 21a-277 or 21a-278.

41 (b) Any person who violates section 21a-277 or 21a-278 by
42 manufacturing, distributing, selling, prescribing, dispensing,
43 compounding, transporting with the intent to sell or dispense,
44 possessing with the intent to sell or dispense, offering, giving or
45 administering to another person any controlled substance in or on, or

46 within [one thousand five hundred feet] two hundred feet of the
47 perimeter of, the real property comprising (1) a public or private
48 elementary or secondary school during regular school hours or the
49 hours of any school-sponsored activity conducted on such property
50 where students are present, (2) a public housing project, or (3) a
51 licensed child day care center, as defined in section 19a-77, [that]
52 during the operating hours of such center, which center is identified as
53 a child day care center by a sign posted in a conspicuous place, shall be
54 imprisoned for a term of three years, which [shall not be suspended
55 and] shall be in addition and consecutive to any term of imprisonment
56 imposed for violation of section 21a-277 or 21a-278. To constitute a
57 violation of this subsection, an act of transporting or possessing a
58 controlled substance shall be with intent to sell or dispense in or on, or
59 within [one thousand five hundred feet] two hundred feet of the
60 perimeter of, the real property comprising a public or private
61 elementary or secondary school during regular school hours or the
62 hours of any school-sponsored activity conducted on such property
63 where students are present, a public housing project or a licensed child
64 day care center, as defined in section 19a-77, [that] during the
65 operating hours of such center, which center is identified as a child day
66 care center by a sign posted in a conspicuous place. For the purposes
67 of this subsection, "public housing project" means dwelling
68 accommodations operated as a state or federally subsidized
69 multifamily housing project by a housing authority, nonprofit
70 corporation or municipal developer, as defined in section 8-39,
71 pursuant to chapter 128 or by the Connecticut Housing Authority
72 pursuant to chapter 129.

73 (c) Any person who employs, hires, uses, persuades, induces,
74 entices or coerces a person under eighteen years of age to violate
75 section 21a-277 or 21a-278 shall be imprisoned for a term of three
76 years, which shall not be suspended and shall be in addition and
77 consecutive to any term of imprisonment imposed for violation of
78 section 21a-277 or 21a-278.

79 Sec. 3. Section 21a-279 of the general statutes is repealed and the

80 following is substituted in lieu thereof (*Effective October 1, 2009*):

81 (a) Any person who possesses or has under his control any quantity
82 of any narcotic substance, except as authorized in this chapter, for a
83 first offense, may be imprisoned not more than seven years or be fined
84 not more than fifty thousand dollars, or be both fined and imprisoned;
85 and for a second offense, may be imprisoned not more than fifteen
86 years or be fined not more than one hundred thousand dollars, or be
87 both fined and imprisoned; and for any subsequent offense, may be
88 imprisoned not more than twenty-five years or be fined not more than
89 two hundred fifty thousand dollars, or be both fined and imprisoned.

90 (b) Any person who possesses or has under his control any quantity
91 of a hallucinogenic substance other than marijuana or four ounces or
92 more of a cannabis-type substance, except as authorized in this
93 chapter, for a first offense, may be imprisoned not more than five years
94 or be fined not more than two thousand dollars or be both fined and
95 imprisoned, and for a subsequent offense may be imprisoned not more
96 than ten years or be fined not more than five thousand dollars or be
97 both fined and imprisoned.

98 (c) Any person who possesses or has under his control any quantity
99 of any controlled substance other than a narcotic substance, or a
100 hallucinogenic substance other than marijuana or who possesses or has
101 under his control less than four ounces of a cannabis-type substance,
102 except as authorized in this chapter, for a first offense, may be fined
103 not more than one thousand dollars or be imprisoned not more than
104 one year, or be both fined and imprisoned; and for a subsequent
105 offense, may be fined not more than three thousand dollars or be
106 imprisoned not more than five years, or be both fined and imprisoned.

107 (d) Any person who violates subsection (a), (b) or (c) of this section
108 in or on, or within [one thousand five hundred feet] two hundred feet
109 of the perimeter of, the real property comprising (1) a public or private
110 elementary or secondary school during regular school hours or the
111 hours of any school-sponsored activity conducted on such property
112 where students are present and who is not enrolled as a student in

113 such school, or (2) a licensed child day care center, as defined in
 114 section 19a-77, [that] during the operating hours of such center, which
 115 center is identified as a child day care center by a sign posted in a
 116 conspicuous place, shall be imprisoned for a term of two years, which
 117 [shall not be suspended and] shall be in addition and consecutive to
 118 any term of imprisonment imposed for violation of subsection (a), (b)
 119 or (c) of this section.

120 (e) As an alternative to the sentences specified in subsections (a) and
 121 (b) and specified for a subsequent offense under subsection (c) of this
 122 section, the court may sentence the person to the custody of the
 123 Commissioner of Correction for an indeterminate term not to exceed
 124 three years or the maximum term specified for the offense, whichever
 125 is the lesser, and at any time within such indeterminate term and
 126 without regard to any other provision of law regarding minimum term
 127 of confinement, the Commissioner of Correction may release the
 128 convicted person so sentenced subject to such conditions as he may
 129 impose including, but not limited to, supervision by suitable authority.
 130 At any time during such indeterminate term, the Commissioner of
 131 Correction may revoke any such conditional release in his discretion
 132 for violation of the conditions imposed and return the convicted
 133 person to a correctional institution.

134 (f) To the extent that it is possible, medical treatment rather than
 135 criminal sanctions shall be afforded individuals who breathe, inhale,
 136 sniff or drink the volatile substances defined in subdivision (49) of
 137 section 21a-240.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	21a-267
Sec. 2	October 1, 2009	21a-278a
Sec. 3	October 1, 2009	21a-279

JUD Joint Favorable Subst.

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Judicial Dept.	GF - Potential Revenue Loss	Less than \$1,000	Less than \$1,000
Judicial Dpt (Probation); Correction, Dept.	GF - Savings	Significant	Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill limits the reach of penalty enhancements for any person convicted of illegal drug activities near schools, day care centers and public housing projects.¹ It also eliminates the mandatory minimum prison sentences for any person convicted of possessing or delivering drugs. Each year, approximately 6,000 charges are filed for violations of these drug laws, resulting in approximately 40 convictions under them which carry mandatory minimum prison sentences.

Significant annual state savings would be generated under the bill from: (1) elimination of the mandatory minimum prison sentences; and (2) reducing the maximum criminal penalties to which offenders are exposed thereby potentially lowering the criminal penalties that are ultimately imposed subsequent to plea bargaining. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender. Since criminal fines are seldom imposed, any revenue loss under the bill is

¹ The bill reduces (from 1,500 to 200) the distance from the facilities listed that subjects any person who commits drug offenses to stiffer criminal penalties; in addition, it reduces the applicability of these penalty enhancements to the time

anticipated to be minimal.

The Out Years

The annualized ongoing savings identified above would continue into the future subject to inflation; the annualized ongoing revenue loss from criminal fines would remain constant since fine amounts are set by statute.

Sources: Judicial Department Criminal/Motor Vehicle Statute Files

periods during which the facilities are operating (e.g., during regular school hours instead of 24/7).

OLR Bill Analysis

sHB 6581

AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

SUMMARY:

This bill makes a number of changes to the laws that enhance the penalties for illegal drug activities near schools, day care centers, and public housing projects. Under current law, a mandatory sentence applies in addition and consecutive to any prison term imposed for the underlying crime as follows:

1. one year for possessing drug paraphernalia within 1,500 feet of property comprising a public or private elementary or secondary school when the perpetrator is not enrolled as a student there;
2. three years for selling illegal drugs within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign, (b) public or private elementary or secondary school, or (c) public housing project; and
3. two years for possessing illegal drugs within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign or (b) public or private elementary or secondary school when the perpetrator is not enrolled as a student there.

Under the bill, the prison sentence under these provisions remains a term that is in addition and consecutive to any prison term imposed for the underlying crime but the court can suspend all or a portion of it without meeting the criteria required by current law (see BACKGROUND). The bill also limits the scope of these provisions by:

1. reducing the size of the zones around the locations from 1,500 to 200 feet;
2. for schools, requiring the illegal activity to occur during regular school hours or hours of any school-sponsored activity conducted on the property where students are present; and
3. for day care centers, requiring the illegal activity to occur during the center's operating hours.

The bill specifies that the zones are measured from the perimeter of the property.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Departing From a Mandatory Minimum

Judges can impose less than the law's mandatory minimum sentence under these laws when no one was hurt during the crime and the defendant (1) did not use or attempt or threaten to use physical force; (2) was unarmed; and (3) did not use, threaten to use, or suggest that he had a deadly weapon (such as a gun or knife) or other instrument that could cause death or serious injury.

Defendants must show good cause and can invoke these provisions only once. Judges must state at sentencing hearings their reasons for (1) imposing the sentence and (2) departing from the mandatory minimum (CGS § 21a-283a).

Penalties for Illegal Drug Crimes

By law, the penalty for using or possessing with intent to use drug paraphernalia is a class C misdemeanor, punishable by up to three months in prison, a fine of up to \$500, or both. Delivering, possessing with intent to deliver, or manufacturing drug paraphernalia is a class A misdemeanor punishable by up to one year in prison, a fine of up to \$2,000, or both (CGS § 21a-267).

By law, selling, manufacturing, or distributing a hallucinogen (not

marijuana) or narcotic is punishable (1) for a first offense, by up to 15 years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 30 years, a fine of up to \$100,000, or both; and (3) for a subsequent offense, up to 30 years, a fine of up to \$250,000, or both. For marijuana and other controlled substances, the penalty is (1) for a first offense, up to seven years, a fine of up to \$25,000, or both and (2) for a subsequent offense, up to 15 years, a fine of up to \$100,000, or both (CGS § 21a-277).

By law, a non-drug dependent person selling, manufacturing, or distributing at least one ounce of heroin or methadone, one half ounce of cocaine or crack, or five milligrams of LSD is subject to five to 20 years in prison to life. For narcotics, hallucinogens, one kilogram or more of cannabis, or amphetamines, the penalty is (1) for a first offense five to 20 years and (2) for a subsequent offense, 10 to 25 years. There is an exception to the mandatory minimum sentence if the offender is under age 18 or had a significantly impaired mental capacity at the time (CGS § 21a-278).

By law, possession of narcotics is punishable (1) for a first offense, by up to seven years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 15 years, a fine of up to \$100,000, or both; (3) for subsequent offenses, up to 25 years, a fine of up to \$250,000, or both. Possession of a hallucinogen or four or more ounces of marijuana is punishable (1) for a first offense, by up to five years in prison, a fine of up to \$2,000, or both and (2) for a subsequent offense, by up to 10 years, a fine of up to \$5,000, or both. Possession of other controlled substances or less than four ounces of marijuana is punishable (1) for a first offense, by up to one year in prison, a fine of up to \$1,000, or both and (2) for a subsequent offense, up to five years, a fine of up to \$3,000, or both (CGS § 21a-279).

Related Bill

sSB 349, favorably reported by the Judiciary Committee, decriminalizes the illegal possession of less than one half ounce of marijuana by anyone age 18 or older by reducing the penalty to a

violation punishable by a \$250 fine.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 23 Nay 17 (04/01/2009)

OFA/OLR RACIAL AND ETHNIC IMPACT STATEMENT

sHB 6581

AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

Pursuant to PA 08-143 and Joint Rule 15(c)(2), a committee voted to require a racial and ethnic impact statement on this bill. Under the public act and rule, a committee can vote to require such a statement on a bill that would, if passed, increase or decrease the pretrial or sentenced population of state correctional facilities.

The following Racial and Ethnic Impact Statement is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.

This statement sets out demographic information on the state's general population and in the criminal justice population, within the limits of data currently available in Connecticut. We obtained data from the Department of Correction (DOC), Judicial Branch, and U.S. Census. The precision of direct comparisons between the data sources is limited because each agency defines demographic categories differently.

IMPACT STATEMENT

The bill makes a number of changes to the laws that enhance the penalties for drug activity near schools, day care centers, and public housing projects. It:

1. allows the prison term imposed under these laws to be suspended under any circumstances, and not just the limited

ones set by current law and

2. limits the scope of these laws by (a) reducing the size of the zones around the locations from 1,500 to 200 feet and (b) restricting the time of day when illegal activity occurring near schools and day care centers qualifies for the enhanced penalty.

The bill specifies that the zones are measured from the perimeter of the property.

The available data shows disparities between the demographics of the general population and the demographics of offenders incarcerated for the crimes affected by the bill. Based on the data, the proportion of black and Hispanic inmates for drug offenses in general and for the drug offenses directly affected by the bill is greater than their proportion of the general population (see BACKGROUND). The proportion of white inmates is lower than their proportion of the general population.

Because the bill (1) gives the court discretion to suspend the sentence enhancements, which could reduce the length of prison sentences for offenders convicted under these statutes and (2) reduces the scope of these laws, which could reduce the number of people sentenced to prison under them, it could reduce this disparity between the general population and the prison population. But the bill's impact is unclear because of the (1) small number of offenders currently incarcerated for these crimes and (2) lack of data on plea bargaining that is only available from police, prosecutor, and court case files.

DOC Statistics for Drug Crimes

Based on data provided by DOC, 3,649 offenders were incarcerated with a drug crime as their most serious offense on January 1, 2009. Of these offenders, 17 were incarcerated under the enhanced penalties affected by the bill (all of these involved possession of illegal drugs). Table 1 displays this data.

Table 1: Offenders Incarcerated With Drug Crimes as Their Most Serious Offense, January 1, 2009

	<i>Black</i>	<i>Hispanic</i>	<i>White</i>	<i>Asian</i>	<i>American Indian</i>
<i>All Drug Offenses</i>					
Sentenced (3,649 inmates)	54.78%	33.08%	11.67%	0.33%	0.13%
Unsentenced (608 inmates)	47.20%	29.61%	23.03%	0.0%	0.16%
<i>Drug Offenses Near Prohibited Places</i>					
Sentenced or Unsentenced (17 inmates)	29.41%	29.41%	41.18%	0.0%	0.0%

Judicial Branch Data for Drug Crimes

Based on Judicial Branch data, the courts disposed of 41,253 drug offenses in 2008. Of these, 5,999 were drug zone offenses affected by the bill. This amounts to 14.54% of all drug offenses.

For all drug offenses, 25.81% resulted in a conviction. For the drug zone offenses, 0.67% resulted in a conviction.

This data is based on charges and not individuals. Thus, an individual could have more than one charge at a time and could have more than one charge in the course of a year.

Judicial Branch data is based on arrest reports and, in most instances, arrest reports do not show "Hispanic" as a category. Because Judicial Branch data reported on Hispanics is incomplete, we do not include it as a separate category. It is also important to note that because most arrest reports do not have a category for Hispanics, people who would otherwise be counted as Hispanic are counted in other categories, which inflates the numbers in those categories.

Table 2: Drug Offenses Disposed by the Courts in 2008

	<i>White</i>	<i>Black</i>	<i>Other</i>
<i>Offenses</i>			
All Drug Offenses (41,253 offenses)	61.67%	33.26%	5.07%
Drug Offenses Near Prohibited Places (5,999 offenses)	47.32%	46.37%	6.30%
<i>Convictions</i>			
All Drug Offenses (10,646 offenses)	55.98%	38.95%	5.06%
Drug Offenses Near Prohibited Places (40 offenses)	35.00%	65.00%	0.0%

Maps of Zones

In the past, OLR created maps showing how drug zone laws affect specific towns (see OLR Reports 2001-R-0330 and 2005-R-0460 and Program Review and Investigations Committee report *Mandatory Minimum Sentences*, 2005). We were not able to update these maps to show the affect of the bill on individual towns within the time frame for producing this statement. We will produce maps for four towns, to show how the bill affects different types of towns in a soon-to-be completed OLR Report (2009-R-0184).

BACKGROUND

State and Prison Populations

According to U.S. Census estimates for July 1, 2007 (the most recent estimate available with data on race and ethnicity), Connecticut's total population is 3,502,309. The table below breaks down the state population by demographics, with Hispanics of any race counted as Hispanic and not included in any of the other demographic categories.

<i>U.S. Census Population Estimates for Connecticut, July 1, 2007</i>	
<i>Population</i>	<i>Percent of Total</i>

		<i>Population</i>
White	2,604,349	74.36%
Hispanic	403,375	11.52%
Black or African American	327,250	9.34%
Asian	117,628	3.36%
American Indian and Alaska Native	8,178	.23%
Native Hawaiian and Other Pacific Islander	1,378	.04%
Two or More Races	40,151	1.15%
Total	3,502,309	100%

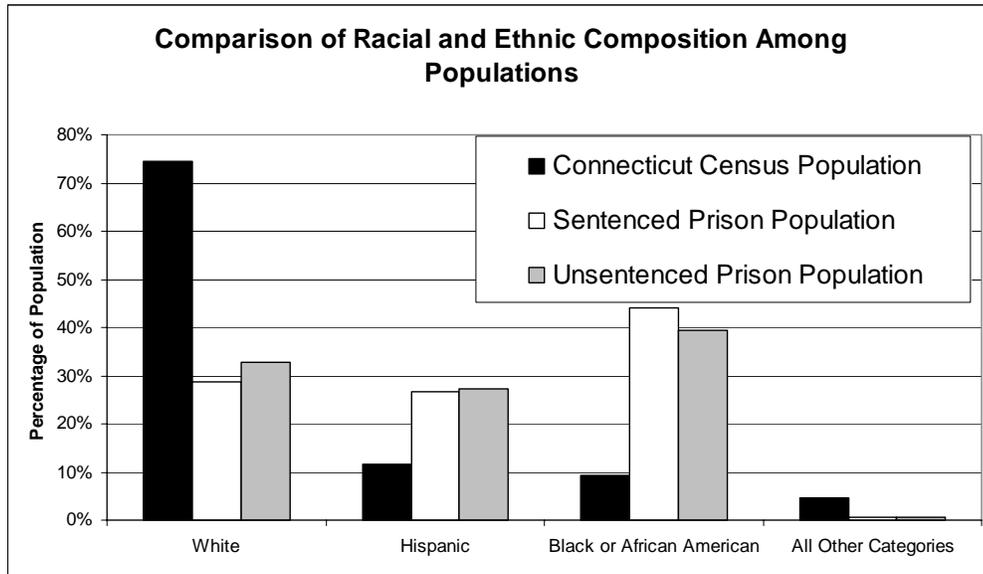
Using data provided by the DOC for January 1, 2009, the total sentenced prison population was 14,746 and the demographic composition of this population was:

- 28.68% white,
- 26.62% Hispanic,
- 44.10% black,
- 0.41% Asian, and
- 0.18% American Indian.

Also incarcerated is the unsentenced population that includes defendants held pretrial and convicted offenders awaiting sentencing. According to DOC, the unsentenced prison population on January 1, 2009 was 3,832 and the demographic composition of this population was:

- 32.72% white,
- 27.24% Hispanic,
- 39.35% black,
- 0.31% Asian, and
- 0.37% American Indian.

The chart below displays this Census and DOC prison population data.



AN ACT concerning State government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Racial and Ethnic Impact Research Task Force Act.

Section 5. Purpose. The purpose of this Act is to determine a practical method for the standardized collection and analysis of data on the racial and ethnic identity of arrestees by State and local law enforcement agencies. The method shall be usable not only for the collection and analysis of data on the racial and ethnic identity of arrestees under current law, but also in predicting the likely racial and ethnic identity of arrestees under proposed changes to the Criminal Code of 1961, the Code of Criminal Procedure of 1963, and the Unified Code of Corrections.

Section 10. Racial and Ethnic Impact Research Task Force. There is created the Racial and Ethnic Impact Research Task Force, composed of the following members:

- (1) Two members of the Senate appointed by the Senate President, one of whom the President shall designate to serve as co-chair, and 2 members of the Senate appointed by the Minority Leader of the Senate.

(2) Two members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom the Speaker shall designate to serve as co-chair, and 2 members of the House of Representatives appointed by the Minority Leader of the House of Representatives.

(3) The following persons or their designees:

(A) the Attorney General,

(B) the Chief Judge of the Circuit Court of Cook County,

(C) the Director of State Police,

(D) the Superintendent of the Chicago Police Department,

(E) the Sheriff of Cook County,

(F) the State Appellate Defender,

(G) the Cook County Public Defender,

(H) the Director of the Office of the State's Attorneys Appellate Prosecutor,

(I) the Cook County State's Attorney,

(J) the Executive Director of the Illinois Criminal Justice Information Authority,

(K) the Director of Corrections,

(L) the Director of Juvenile Justice, and

(M) the Executive Director of the Illinois African-American Family Commission.

(4) The co-chairs may name up to 8 persons,

representing minority communities within Illinois, groups involved in the improvement of the administration of justice, behavioral health, criminal justice, law enforcement, and the rehabilitation of former inmates, community groups, and other interested parties.

Section 15. Compensation; support. The members of the Task Force shall serve without compensation, but may be reimbursed for reasonable expenses incurred as a result of their duties as members of the Task Force from funds appropriated by the General Assembly for that purpose. The Center for Excellence in Criminal Justice at the Great Lakes Addiction Technology Transfer Center at Jane Addams College of Social Work at the University of Illinois at Chicago shall provide staff and administrative support services to the Task Force.

Section 20. Meetings; report. The Task Force shall hold one or more public hearings, at which public testimony shall be heard. The Task Force shall report its findings and recommendations to the General Assembly on or before July 1, 2012. The recommendations shall include, but are not limited to:

(1) identifying a practical method for the standardized collection and analysis of data on the racial and ethnic identity of arrestees by State and local law enforcement agencies; and

(2) providing proposed legislation, drafted with the assistance of the Legislative Reference Bureau, and using the identified practical method for the standardized collection and analysis of data on the racial and ethnic identity of arrestees by State and local law enforcement agencies, to create a Racial and Ethnic Impact Statement providing an analysis of the likely racial and ethnic identity of arrestees under proposed changes to the Criminal Code of 1961, the Code of Criminal Procedure of 1963, and the Unified Code of Corrections.

Section 99. Effective date. This Act takes effect upon becoming law.



BILL SUMMARY

HF 2393 Minority Impact Statements

Status of Bill: House Calendar
Committee: Human Resources (passed Committee 15-6)
Floor Manager: Rep. Mark Smith
Research Analyst: Zeke Furlong 515-281-6972
zeke.furlong@legis.state.ia.us

March 25, 2008

Background

HF 2393 came out of discussions during the interim as a result of the Sentencing Project's report on the prison population in Iowa. This bill was one of several proposals that were discussed regarding at-risk populations.

Summary

Definitions

Minority persons includes individuals who are women, persons with a disability, Blacks, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

Disability does not include any of the following:

- Homosexuality or bisexuality.
- Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
- Compulsive gambling, kleptomania, or pyromania.
- Psychoactive substance abuse disorders resulting from current illegal use of drugs.

Grant Applications – Minority Impact Statements

The bill requires that each application for a grant from the Iowa Department of Public Health (IDPH), the Iowa Department of Human Services (DHS), and the Department of Human Rights (DHR) to include a minority impact statement that contains the following information:

- Any disproportionate or unique impact of proposed policies or programs on minority persons in Iowa.
- A rationale for the existence of programs or policies having an impact on minority persons in Iowa.
- Evidence of consultation with representatives of minority persons in cases where a policy or program has an identifiable impact on minority persons in Iowa.

The Office of Grants Enterprise Management will create and distribute the minority impact statement form to the departments named above, and ensure its inclusion with applications for grants.

The directives of this bill must be carried out within consistent federal law.

Effective and Applicability Dates

HF 2393 takes effect on July 1, 2008, and will apply to grants for which applications are due beginning January 1, 2009.

Amendments

H-8096 by Smith (D)

This amendment will be withdrawn, H-8280 is an updated version.

H-8260 to H-8096 by Ford (D)

The amendment adds language stating that the minority impact statements must be used for informational purposes.

H-8243 by Smith (D), et. al.

This amendment will be withdrawn, H-8280 is an updated version.

H-8280 by Ford (D), Smith (D), Swaim (D), Abdul-Samad (D), Tomenga (R), and Heaton (R)

The amendment is a strike after amendment that combines HF 8243 and HF 2288 with a minor change.

The title of the bill is changed to “An Act providing requirements for minority impact statements in relation to state grant applications and correctional impact statements for legislation, and providing effective and applicability dates.

Definitions

Minority persons includes individuals who are women, persons with a disability, Blacks, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

Disability does not include any of the following:

- Homosexuality or bisexuality.
- Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
- Compulsive gambling, kleptomania, or pyromania.
- Psychoactive substance abuse disorders resulting from current illegal use of drugs.

State agency is defined as a department, board, bureau, commission, or other agency or authority of the State of Iowa.

Correctional Impact Statements

The bill adds the requirement that Correctional Impact Statements must now include the impact of the legislation on minorities. Current law states that Correctional Impact Statements must be attached to any bill, joint resolution, or amendment before debate on the floor of the chamber of the General Assembly. In addition, the Correctional Impact Statement is only required when a change in the law is proposed which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures.

New language is added stating that LSA, in cooperation with the Division of Criminal and Juvenile Justice Planning of the Department of Human Rights, must develop a protocol for analyzing the impact of the legislation on minorities.

Grant Applications – Minority Impact Statements

The bill requires that each application for a grant from a state agency to include a minority impact statement that contains the following information:

- Any disproportionate or unique impact of proposed policies or programs on minority persons in Iowa.
- A rationale for the existence of programs or policies having an impact on minority persons in Iowa.
- Evidence of consultation with representatives of minority persons in cases where a policy or program has an identifiable impact on minority persons in Iowa.

The minority impact statements must be used for informational purposes.

The Office of Grants Enterprise Management will create and distribute the minority impact statement form for state agencies, and ensure its inclusion with applications for grants. The directives of this bill must be carried out within consistent federal law.

Effective and Applicability Dates

Takes effect on July 1, 2008, and will apply to grants for which applications are due beginning January 1, 2009.

Document 1 of 1**Source:**

Iowa Acts/2008 Iowa Acts/2008 Iowa Acts /CHAPTER 1095

CHAPTER 1095**IMPACT OF LEGISLATION AND
STATE GRANTS ON MINORITIES - STATEMENTS
H.F. 2393**

AN ACT providing requirements for minority impact statements in relation to state grant applications and correctional impact statements for legislation, and providing effective and applicability dates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 2.56, subsection 1, Code 2007, is amended to read as follows:

1. Prior to debate on the floor of a chamber of the general assembly, a correctional impact statement shall be attached to any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures. The statement shall include information concerning the estimated number of criminal cases per year that the legislation will impact, the fiscal impact of confining persons pursuant to the legislation, the impact of the legislation on minorities, the impact of the legislation upon existing correctional institutions, community-based correctional facilities and services, and jails, the likelihood that the legislation may create a need for additional prison capacity, and other relevant matters. The statement shall be factual and shall, if possible, provide a reasonable estimate of both the immediate effect and the long-range impact upon prison capacity.

Sec. 2. Section 2.56, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION . 4A. The legislative services agency in cooperation with the division of criminal and juvenile justice planning of the department of human rights shall develop a protocol for analyzing the impact of the legislation on minorities.

Sec. 3. NEW SECTION . 8.11 GRANT APPLICATIONS - MINORITY IMPACT STATEMENTS.

1. Each application for a grant from a state agency shall include a minority impact statement that contains the following information:

- a. Any disproportionate or unique impact of proposed policies or programs on minority persons in this state.
- b. A rationale for the existence of programs or policies having an impact on minority persons in this state.
- c. Evidence of consultation of representatives of minority persons in cases where a policy or program has an identifiable impact on minority persons in this state.

2. For the purposes of this section, the following definitions shall apply:

- a. "Disability" means the same as provided in section 15.102, subsection 5, paragraph "b", subparagraph (1).
- b. "Minority persons" includes individuals who are women, persons with a disability, Blacks, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans.
- c. "State agency" means a department, board, bureau, commission, or other agency or authority of the state of Iowa.

3. The office of grants enterprise management shall create and distribute a minority impact statement form for state agencies and ensure its inclusion with applications for grants.

4. The directives of this section shall be carried out to the extent consistent with federal law.

5. The minority impact statement shall be used for informational purposes.

Sec. 4. **EFFECTIVE AND APPLICABILITY DATES.** This Act takes effect July 1, 2008, and shall apply to grants for which applications are due beginning January 1, 2009.

Approved April 17, 2008

© Iowa Legislature

2009 IOWA ACTS
CHAPTER 41

NONSUBSTANTIVE CODE CORRECTIONS

S.F. 446

AN ACT relating to nonsubstantive Code corrections and providing effective dates and for retroactive applicability.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I
MISCELLANEOUS CHANGES

Section 1. Section 1.1, Code 2009, is amended to read as follows:

1.1 STATE BOUNDARIES.

The boundaries of the state are as defined in the preamble of the Constitution of the State of Iowa.

Sec. 2. Section 2.32A, subsection 1, Code 2009, is amended to read as follows:

1. A member of the general assembly who is charged with making an appointment to a statutory board, commission, council, or committee shall make the appointment prior to the fourth Monday in January of the first regular session of each general assembly and in accordance with section 69.16B. If multiple appointing members are charged with making appointments of public members to the same board, commission, council, or committee, including as provided in section 333A.2, the appointing members shall consult with one another in making the appointments. If the senate appointing member for a legislative appointment is the president, majority leader, or the minority leader, the appointing ~~authority~~ member shall consult with the other two leaders in making the appointment. If the house of representatives appointing member is the speaker, majority leader, or minority leader, the appointing member shall consult with the other two leaders in making the appointment.

Sec. 3. Section 7C.13, subsection 2, Code 2009, is amended to read as follows:

2. ANNUAL REPORT AND AUDIT. The qualified student loan bond issuer shall submit an annual report to the governor, general assembly, and the auditor of state by January 15 setting forth its operations and activities conducted and newly implemented in the previous fiscal year related to use of the allocation of the state ceiling in accordance with this chapter and the outlook for the future. The report shall describe how the operations and activities serve students and parents. The annual audit of the qualified student loan bond issuer shall be filed with the office of auditor of state.

Sec. 4. Section 7E.5, subsection 1, paragraph s, Code 2009, is amended to read as follows:

s. The department of human rights, created in section 216A.1, which has primary responsibility for services relating to Latino persons, women, persons with disabilities, community action agencies, criminal and juvenile justice planning, ~~the status of African Americans~~ African Americans, deaf and hard-of-hearing persons, ~~status of Iowans~~ persons of Asian and Pacific Islander heritage, and ~~Native Americans~~ Native Americans.

Sec. 5. Section 8.6, subsection 9, unnumbered paragraph 1, Code 2009, is amended to read as follows:

BUDGET REPORT. ~~The director shall~~ To prepare and file in the department of management, on or before the first day of December of each year, a state budget report, which shall show in detail the following:

Sec. 6. Section 8.11, subsection 2, paragraph b, Code 2009, is amended to read as follows:

b. "Minority persons" includes individuals who are women, persons with a disability, ~~Blacks~~ African Americans, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans.

CHAPTER 8

DEPARTMENT OF MANAGEMENT — BUDGET AND FINANCIAL CONTROL ACT

Referred to in §20.5, 80B.14, 84A.1A, 84A.4, 99D.17, 99G.10, 123.11, 173.22A, 215A.9, 216A.2, 216A.3, 307.8, 313.4, 313.5, 324A.6, 476.10, 905.5

	GENERAL PROVISIONS	8.37	Repealed by 2001 Acts, 2nd Ex, ch 2, §12, 13.
8.1	Title.	8.38	Misuse of appropriations.
8.2	Definitions.	8.39	Use of appropriations — transfer.
8.3	Governor.	8.39A	Repealed by 2001 Acts, 2nd Ex, ch 2, §12, 13.
8.3A	Capital project planning and budgeting — governor's duties.	8.40	Penalty — removal — impeachment.
		8.41	Federal funds — deposit — block grant plans — affected political subdivisions.
	DEPARTMENT OF MANAGEMENT		
8.4	Department of management.	8.41A	Federal recovery and reinvestment fund.
8.5	General powers and duties.	8.42	Repealed by 2001 Acts, 2nd Ex, ch 2, §12, 13.
8.6	Specific powers and duties.	8.43	Salary adjustment fund.
8.7	Reporting of gifts and bequests received.	8.44	Reporting additional funds received.
8.8	Special olympics fund — appropriation.	8.45	Purchase of real estate by state departments.
8.9	Grants enterprise management office.	8.46	Lease-purchase — reporting.
8.10	Facilitator's duties.	8.47	Service contracts.
8.11	Grant applications — minority impact statements.	8.48	through 8.50 Reserved.
8.12	through 8.20 Reserved.	8.51	Political subdivisions — fiscal year — unexpended funds.
		8.52	Planning responsibility.
	THE BUDGET	8.53	GAAP deficit — GAAP implementation.
8.21	Budget transmitted.	8.54	General fund expenditure limitation.
8.22	Nature and contents of budget.		
8.22A	Revenue estimating conference.		
8.23	Annual departmental estimates.		
8.24	Repealed by 2001 Acts, 2nd Ex, ch 2, §12, 13.		
8.25	Tentative budget.		
8.26	Hearings.		
8.27	Preparation of budget.	8.55	Iowa economic emergency fund.
8.28	Supplemental estimates.	8.56	Cash reserve fund.
8.29	Regents universities — uniform accounting system.	8.57	Annual appropriations — reduction of GAAP deficit — rebuild Iowa infrastructure fund.
		8.57A	Environment first fund.
	EXECUTION OF THE BUDGET	8.57B	Vertical infrastructure fund.
8.30	Availability of appropriations.	8.57C	Technology reinvestment fund.
8.31	Allotments of appropriations — exceptions — modifications.	8.57D	Vertical infrastructure restricted capitals fund. Repealed by 2010 Acts, ch 1184, §95.
8.32	Conditional availability of appropriations.	8.57E	Taxpayers trust fund.
8.33	Time limit on obligations — reversion.	8.57F	State bond repayment fund.
8.34	Charging off unexpended appropriations.	8.58	Exemption from automatic application.
8.35	General supervisory control.		
8.35A	Information to be given to legislative services agency.		
8.36	Fiscal year.		
8.36A	Full-time equivalent positions.	8.59	APPROPRIATIONS FREEZE — USE OF DESIGNATED MONEYS Appropriations freeze.

subdivisions of the state, directly or through interagency contracts, cooperative agreements, or contracts with third-party providers.

7. Monitor the federal register and other federal or state publications to identify funding opportunities, with special emphasis on discretionary grants or other funding opportunities available to the state.

8. Periodically review the funding strategies and methods of those states that rank significantly above the national average in the per capita receipt of federal funds to determine whether those strategies and methods could be successfully employed by this state.

2003 Acts, ch 99, §2

8.11 Grant applications — minority impact statements.

1. Each application for a grant from a state agency shall include a minority impact statement that contains the following information:

a. Any disproportionate or unique impact of proposed policies or programs on minority persons in this state.

b. A rationale for the existence of programs or policies having an impact on minority persons in this state.

c. Evidence of consultation of representatives of minority persons in cases where a policy or program has an identifiable impact on minority persons in this state.

2. For the purposes of this section, the following definitions shall apply:

a. “Disability” means the same as provided in section 15.102, subsection 10, paragraph “b”, subparagraph (1).

b. “Minority persons” includes individuals who are women, persons with a disability, African Americans, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans.

c. “State agency” means a department, board, bureau, commission, or other agency or authority of the state of Iowa.

3. The office of grants enterprise management shall create and distribute a minority impact statement form for state agencies and ensure its inclusion with applications for grants.

4. The directives of this section shall be carried out to the extent consistent with federal law.

5. The minority impact statement shall be used for informational purposes.

2008 Acts, ch 1095, §3, 4; 2009 Acts, ch 41, §6

[T] Section not amended; internal reference change applied

8.12 through 8.20 Reserved.

THE BUDGET

[P] See §8.6(9)

8.21 Budget transmitted.

Not later than February 1 of each legislative session, the governor shall transmit to the legislature a document to be known as a budget, setting forth the governor’s financial program for the ensuing fiscal year and having the character and scope set forth in sections 8.22 through 8.29.

If the governor is required to use a lesser amount in the budget process because of a later meeting of the state revenue estimating conference under section 8.22A, subsection 3, the governor shall transmit recommendations for a budget in conformance with that requirement within fourteen days of the later meeting of the state revenue estimating conference.

[SS15, §191-b; C24, 27, 31, §334; C35, §84-e14; C39, §84.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §8.21]

86 Acts, ch 1245, §2015; 92 Acts, ch 1227, §1; 2001 Acts, 2nd Ex, ch 2, §4, 13

Referred to in §8.27, 8.54, 257.8

Minority Impact Statement

Pursuant to 2008 Iowa Acts, HF 2393, Iowa Code Section 8.11, all grant applications submitted to the State of Iowa which are due beginning January 1, 2009 shall include a Minority Impact Statement. This is the state's mechanism to require grant applicants to consider the potential impact of the grant project's proposed programs or policies on minority groups.

Please choose the statement(s) that pertains to this grant application. Complete all the information requested for the chosen statement(s).

- The proposed grant project programs or policies could have a disproportionate or unique **positive** impact on minority persons.

Describe the positive impact expected from this project

Indicate which group is impacted:

- Women
- Persons with a Disability
- Blacks
- Latinos
- Asians
- Pacific Islanders
- American Indians
- Alaskan Native Americans
- Other

- The proposed grant project programs or policies could have a disproportionate or unique **negative** impact on minority persons.

Describe the negative impact expected from this project

Present the rationale for the existence of the proposed program or policy.

Provide evidence of consultation of representatives of the minority groups impacted.

Indicate which group is impacted:

- Women
- Persons with a Disability
- Blacks
- Latinos
- Asians
- Pacific Islanders
- American Indians
- Alaskan Native Americans
- Other

- The proposed grant project programs or policies are **not expected to have** a disproportionate or unique impact on minority persons.

Present the rationale for determining no impact.

I hereby certify that the information on this form is complete and accurate, to the best of my knowledge: Name: _____
Title: _____

Definitions

“Minority Persons”, as defined in Iowa Code Section 8.11, mean individuals who are women, persons with a disability, Blacks, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans.

“Disability”, as defined in Iowa Code Section 15.102, subsection 5, paragraph “b”, subparagraph (1):

b. As used in this subsection:

(1) *“Disability”* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

“Disability” does not include any of the following:

- (a) Homosexuality or bisexuality.
- (b) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments or other sexual behavior disorders.
- (c) Compulsive gambling, kleptomania, or pyromania.
- (d) Psychoactive substance abuse disorders resulting from current illegal use of drugs.

“State Agency”, as defined in Iowa Code Section 8.11, means a department, board, bureau, commission, or other agency or authority of the State of Iowa.



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To: Members of the Iowa General Assembly
From: Holly M. Lyons, Fiscal Services Division Director
Subject: Minority Impact Statements
Date: February 11, 2013

Pursuant to Iowa Code section 2.56(1), the Legislative Services Agency is required to determine the potential impact on minorities of proposed legislation that creates a public offense, changes a current offense, or changes existing correctional procedures. Minority persons are defined in Iowa Code section 8.11 as women, persons with a disability, Blacks, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans. Disability is defined in Iowa Code section 15.102(5)(b)(1). The statements below provide background information regarding minorities in the correctional system from a national and state perspective.

Iowa Census Information

The U.S. Census estimate for Iowa was 3.1 million people as of 2011 (the most current estimates available). Women comprise 50.5% of the population. Approximately 91.3% of Iowa's population is white. The composition of the remaining 8.7% is: 2.9% Black, 0.4% American Indian or Alaska Native; 1.7% Asian, 0.1% Hawaiian or Other Pacific Islander, 1.8% is of two or more races; and 1.8% unknown. A total of 5.0% of Iowa's population identified themselves as Hispanic or Latino (of any race). Approximately 11.2% of Iowa's population has at least one disability.

Prison System Information

The U.S. Department of Justice estimates there were 1.6 million prisoners incarcerated in federal or State prisons on December 31, 2011 (the most recent data available). Men comprised 93.3% of the total prison population. The following statistics are for offenders sentenced to more than one year of incarceration:

- 37.8% Black;
- 33.6% white;
- 22.8% Hispanic;
- 5.8% of other races or unknown.

Iowa's prison population was 8,333 offenders on June 30, 2012. Men comprised 91.8% of the population. A total of 6.5% of Iowa's prison population identified themselves as Hispanic (nearly all of these identified themselves racially as being white). According to the Criminal and Juvenile Justice Planning Division (CJJPD) of the Department of Human Rights, the racial composition of the prison system was:

- 64.5% white;
- 26.2% Black;
- 0.9% Asian or Pacific Islander;
- 1.8% American Indian or Alaska Native.

Probation and Parole Information

According to the Iowa Department of Corrections (DOC), on June 30, 2012, approximately 8.2% of the offenders in prison were women and 25.7% of offenders under supervision in Community-Based Corrections (CBC) were women. Approximately 21.9% of the total offender population under correctional supervision consisted of women.

According to the U.S. Department of Justice, on December 31, 2011, 75.0% of offenders on probation nationwide are men. Nationally, the racial composition of the probation population was:

- 54.0% white;
- 31.0% Black;
- 13.0% Hispanic or Latino;
- 1.0% American Indian or Alaska Natives;
- 1.0% Asian or Pacific Islander.

According to the U.S. Department of Justice, on December 31, 2011, 11.0% of offenders on parole nationwide are women. Nationally, the racial composition of the parole population was:

- 41.0% white;
- 39.0% Black;
- 18.0% Hispanic or Latino;
- 1.0% American Indian or Alaska Natives;
- 1.0% Asian or Pacific Islander.

Iowa's Corrections System (Prison, Probation, and Parole)

According to the Iowa DOC, the racial composition of offenders under correctional supervision on June 30, 2012 was:

- 74.7% white,
- 17.4% Black;
- 5.2% Hispanic or Latino;
- 1.2% American Indian or Alaska Natives;
- 1.0% Asian or Pacific Islander;
- 0.5% of unknown race.

Please contact Beth Lenstra at 281-6301 or Jennifer Acton at 281-7846 for further assistance.



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Fiscal Note

Fiscal Services Division



SF 384 – Law Enforcement Equipment Removal, Criminal Penalty (LSB 1927SV.1)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.iowa.gov)

Fiscal Note Version – As amended and passed by the Senate

Requested by Bob M. Kressig

Description

Senate File 384 as amended and passed by the Senate creates a new offense, removal of an officer's communication or control device, and provides a graduated system of penalties for the offense. This Bill also designates lesser penalties for the crime of interference with official acts for actions that result in bodily injury compared to those that result in serious injury.

Background

Correctional and Fiscal Information

- The new offense, removal of an officer's communication or control device, defines "officer" as a correctional officer or a person with a professional permit to carry a weapon. The correctional and fiscal impact cannot be estimated due to a lack of data. This Bill provides penalties ranging from a simple misdemeanor to a Class "D" nonforcible felony, depending on the circumstances of the crime.
- Current law provides for a graduated system of penalties for interference with official acts, ranging from a simple misdemeanor to a Class "C" felony depending on the circumstances of the crime.
- According to the Justice Data Warehouse, in FY 2012 there was one charge for Class "C" felony and one charge for Class "D" felony interference with official acts involving injury that resulted in a conviction not-as-charged.
- During FY 2012, there were 59 charges for aggravated misdemeanor interference with official acts involving injury that resulted in convictions not-as-charged. Of these, 57 resulted in simple misdemeanor convictions for interference with official acts (without injury).
- Offenders convicted of a simple misdemeanor offense are not supervised in Iowa's corrections system. They usually are sentenced to a financial penalty or community service, or some combination thereof.
- The impact on the judicial branch operating budget is the case cost difference of a simple misdemeanor (\$28) and a serious misdemeanor (\$209).
- The impact on the indigent defense budget is the case cost difference between a simple misdemeanor (\$300) and a serious misdemeanor (\$600).
- According to the Justice Data Warehouse, the Criminal and Juvenile Justice Planning Division (CJJPD), and the Department of Corrections, the following are estimates for sentencing, length of stay for a serious misdemeanor, and costs for interference with official acts:

Criminal Justice System Information

Conviction Offense Class	Percent Sentenced to Probation	Avg Length of Stay on Probation	Average Cost per Day for Prob/Parole	Percent Sentenced to County Jail	Avg Length of Stay in County Jail	Marginal Cost Per Day
Serious Misdemeanor	28.6%	12.5 months	\$3.66	57.1%	28 days	\$15.00

The sentencing percentage is 85.7% (combined probation and jail sentences). Approximately 14.3% of offenders convicted of this serious misdemeanor will receive a sentence other than probation or county jail incarceration, such as a financial penalty and/or community service.

Minority Data Information

The table below shows the FY 2012 offender-based convictions for interference with official acts, according to the Iowa Court Information System (ICIS). Minority offenders are disproportionately convicted compared to their percentage of the Iowa population.

FY 2012 Convictions for Interference With Official Acts

Conviction Offense Class	Percent White	Percent Black	Percent Hispanic	Percent Native American	Percent Asian	Percent Other or Unknown
Simple Misd.	65.0%	27.2%	5.3%	0.9%	0.8%	0.8%
Serious Misd.	58.3%	41.7%	0.0%	0.0%	0.0%	0.0%
Aggravated Misd.	59.9%	33.6%	5.3%	0.7%	0.0%	0.5%
Total Convictions	64.6%	27.6%	5.2%	0.9%	0.9%	0.8%

The minority impact of the new offense, removal of an officer's communication or control device, cannot be estimated due to a lack of data. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, **Minority Impact Memo**, dated February 11, 2013, for information related to minorities in the criminal justice system.

Assumptions

Correctional and Fiscal Information:

- The new offense limits the definition of "officer." Also, the crime may be similar to the crime of disarming or attempting to disarm a peace officer of a dangerous weapon as defined in **Iowa Code section 708.13(2)**. If so, there were five convictions for that offense in FY 2012. Therefore, there may be few convictions for the new offense of removal of an officer's communication or control device.
- Refer to the **Correctional Impact Memo**, dated February 11, 2013, for information related to costs by crime class. The memo provides a range of costs based on actual costs and length of stay plus certain assumptions. A range of costs is provided for nonviolent crimes. The new crime created in this Bill may be at the higher end of the range because it may be considered a violent crime (against a person) rather than a nonviolent crime.
- In relation to the Bill's provisions regarding interference with official acts, charge, conviction, and sentencing patterns and trends will not change over the projection period.
- Prisoner length of stay, revocation rates, plea bargaining, and other criminal justice policies and practices will not change over the projection period for the crime of interference with official acts.

- This law will become effective July 1, 2013. A lag effect of six months is assumed from the effective date of the Bill to the date of first entry of affected offenders into the correctional system for the crime of interference with official acts.
- Under this Bill, more aggravated misdemeanor charges will result in serious misdemeanor convictions. Approximately half of the offenders currently being convicted of a simple misdemeanor will be convicted of a serious misdemeanor under this Bill's provisions.
- These will be bench trials and 50.0% of the offenders convicted will be indigent.
- There will be increases in county jail sentences for serious misdemeanor convictions.
- Marginal costs for county jails cannot be determined due to a lack of data. For purposes of this analysis, the marginal cost for county jail is assumed to be \$15.00 per day.

Minority Data Information:

- The minority impact of the new crime cannot be estimated due to a lack of data. The crime may be similar to the crime of disarming or attempting to disarm a peace officer of a dangerous weapon as defined in Iowa Code section 708.13(2). If so, then 40.0% of the FY 2012 convicted offenders were Black and 60.0% were White. There may be a minority impact associated with the new crime created in this Bill.
- The impact on minorities for the change to interference with official acts will remain consistent with current data.

Summary of Impacts

Correctional Impact

There will be an estimated 28 offenders annually convicted of a serious misdemeanor under this Bill that are convicted of a simple misdemeanor under current law for the crime of interference with official acts. Net admissions to the correctional system are indicated in the following table. Data in the table does not include the correctional impact of the new offense, removal of an officer's communication or control device.

Net Admissions to the Correctional System

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
County Jail	5	11	11	11	11
Probation	4	8	8	8	8
Total	9	19	19	19	19

The table above shows the net admissions — it does not reflect offenders admitted to the correctional system under current law (estimated to be five offenders annually). An estimated four offenders annually convicted of this serious misdemeanor will receive a sentence other than probation supervision by Community-Based Corrections (CBC) or county jail incarceration, such as a financial penalty and/or community service. The impact on the probation population is expected to be minimal, trending slightly upward over the five-year projection period because the length of stay under supervision exceeds one year.

To the extent that the new crime, removal of an officer's communication or control device, results in new convictions, the correctional impact is understated in this fiscal note.

Minority Impact

It is expected this Bill will have a disproportionate impact on minorities because approximately 34.2% of offenders convicted under the Bill's provisions related to interference with official acts may be minorities. Under current law, these simple misdemeanor offenders are not supervised in the corrections system. This Bill shifts simple misdemeanor convictions to serious

misdemeanor convictions. There will be a minimal increase (estimated to be four offenders annually) in the number of minority offenders supervised in the correctional system (either probation or county jail incarceration).

To the extent that the new crime, removal of an officer's communication or control device, results in new convictions, the minority impact may be understated in this fiscal note.

Fiscal Impact

The fiscal impact for the Bill's provisions related to interference with official acts is estimated to be an increased cost to the State General Fund of \$7,200 in FY 2014 and \$25,300 in FY 2015. County jail costs are estimated to increase by \$2,100 in FY 2014 and \$4,300 in FY 2015. The costs of the new offense, removal of an officer's communication or control device, cannot be estimated.

The table below shows the impact by areas within the criminal justice system for the Bill's provisions related to interference with official acts. Costs will continue to slowly increase in future fiscal years because the length of stay in the corrections system (probation) exceeds one year.

Fiscal Impact by Funding Source

	FY 2014			FY 2015		
	County Budgets	General Fund	Total	County Budgets	General Fund	Total
County Jail	\$ 2,100	\$ 0	\$ 2,100	\$ 4,300	\$ 0	\$ 4,300
CBC - Probation	0	2,600	2,600	0	16,000	16,000
Judicial Branch	0	2,500	2,500		5,100	5,100
Indigent Defense	0	2,100	2,100		4,200	4,200
Total	\$ 2,100	\$ 7,200	\$ 9,300	\$ 4,300	\$ 25,300	\$ 29,600

The fiscal impact to the judicial branch, indigent defense, and county budgets reflect the increased cost for serious misdemeanor cases, minus the costs for simple misdemeanor cases, for the Bill's provisions related to interference with official acts.

To the extent that the new crime, removal of an officer's communication or control device, results in new convictions, the fiscal impact is understated in this fiscal note.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
 Department of Corrections
 Office of the State Public Defender
 State Court Administrator's Office

/s/ Holly M. Lyons

April 3, 2013

The fiscal note for this bill was prepared pursuant to Joint Rule 17 and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.



**LEGISLATIVE
SERVICES AGENCY**
Serving the Iowa Legislature

Fiscal Note

Fiscal Services Division



HF 528 – Interference With Official Acts (LSB 2049HV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.iowa.gov)

Fiscal Note Version – New

Requested by Representative Mary Wolfe

Description

House File 528 changes the focus of the crime of interference with official acts from injuries inflicted by the defendant to injuries sustained by the official.

Background

Correctional and Fiscal Information

- Current law provides for a graduated system of penalties for interference with official acts, ranging from a simple misdemeanor to a Class “C” felony depending on the circumstances of the crime.
- According to the Justice Data Warehouse, in FY 2012 there was one charge for Class “D” felony interference with official acts involving injury that resulted in a conviction not-as-charged (usually for a lesser offense). During FY 2012, there was one charge for a Class “C” felony and 59 charges for aggravated misdemeanor interference with official acts involving injury that resulted in convictions not-as-charged.
- Offenders convicted of a simple misdemeanor offense are not supervised in Iowa’s corrections system. They are usually sentenced to a financial penalty or community service, or some combination thereof.
- The impact on the Judicial Branch’s operating budget is the case cost difference of a simple misdemeanor (\$28) and an aggravated misdemeanor (\$209) or a Class “D” felony (\$427).
- The impact on the indigent defense budget is the case cost difference between a simple misdemeanor (\$300) and an aggravated misdemeanor or Class “D” felony (\$1,200).
- According to the Justice Data Warehouse, the Criminal and Juvenile Justice Planning Division (CJJPD), and the Department of Corrections, the following are estimates for sentencing, length of stay by offense class, and costs for interference with official acts:

Criminal Justice System Information

Conviction Offense Class	Percent Sentenced to State Prison	Avg Length of Stay in Prison	Marginal Cost Per Day	Percent Sentenced to Probation	Avg Length of Stay on Probation	Avg Length of Stay on Parole	Average Cost per Day for Prob/Parole	Percent Sentenced to County Jail	Avg Length of Stay in County Jail	Marginal Cost Per Day*
Aggravated Misdemeanor	9.9%	9.0 months	\$17.60	45.6%	20.4 months	5.5 months	\$3.66	48.9%	28 days	\$15.00
Class "D" Felony	20.0%	21.2 months	\$17.60	80.0%	33.9 months	12.5 months	\$3.66	0.0%	0	\$15.00

*Marginal costs for county jails cannot be determined due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$15.00 per day.

For aggravated misdemeanor convictions, the percent sentenced exceeds 100.0% (104.4%) because certain offenders receive a jail sentence and a probation sentence.

Minority Data Information

The table below shows the FY 2012 offender-based convictions for interference with official acts, according to the Iowa Court Information System (ICIS). Minority offenders are disproportionately convicted compared to their percentage of the Iowa population.

FY 2012 Convictions for Interference With Official Acts

Conviction Offense Class	Percent White	Percent Black	Percent Hispanic	Percent Native American	Percent Asian	Percent Other or Unknown
Simple Misd.	65.0%	27.2%	5.3%	0.9%	0.8%	0.8%
Serious Misd.	58.3%	41.7%	0.0%	0.0%	0.0%	0.0%
Aggravated Misd.	59.9%	33.6%	5.3%	0.7%	0.0%	0.5%
Class "D" Felony	52.6%	26.3%	0.0%	15.8%	5.3%	0.0%
Total Convictions	64.6%	27.6%	5.2%	0.9%	0.9%	0.8%

Refer to the Legislative Services Agency (LSA) **Minority Impact Memo**, dated February 11, 2013, for information related to minorities in the criminal justice system.

Assumptions

Correctional and Fiscal Information

- Charge, conviction, and sentencing patterns and trends will not change over the projection period.
- Prisoner length of stay, revocation rates, plea bargaining, and other criminal justice policies and practices will not change over the projection period.
- The law will become effective July 1, 2013. A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Under this Bill, more charges will result in convicted-as-charged. Approximately half of the convictions currently being convicted not-as-charged will be convicted-as-charged under the Bill.
- These will be bench trials. Half of the offenders convicted are indigent.
- There will be increases in county jail sentences for aggravated misdemeanor convictions.

Minority Data Information: The impact on minorities will remain consistent with current data.

Summary of Impacts

Correctional Impact

There will be an estimated 30 offenders annually convicted of an aggravated misdemeanor and one offender annually convicted of a Class "D" felony under this Bill that are convicted of a simple misdemeanor under current law. Admissions to the correctional system are indicated in the following table:

Estimated Admissions to the Correctional System

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
County Jail	7	15	15	15	15
State Prison	1	3	3	3	3
Probation/Parole	7	15	18	18	18
Total	15	33	36	36	36

On an annual basis, admissions exceed the number convicted because certain offenders will receive a jail sentence followed by a probation sentence. The prison population increase will level off in FY 2015, with an increase of three offenders annually thereafter. The probation and parole population is expected to trend upward over the five-year projection period because the length of stay under supervision exceeds one year for both aggravated misdemeanants and Class "D" felons.

Minority Impact

It is expected this Bill will have a disproportionate impact on minorities because approximately 34.6% of offenders convicted under the Bill's provisions may be minorities. Under current law, these simple misdemeanor offenders are not supervised in the corrections system. This Bill shifts simple misdemeanor convictions to aggravated misdemeanor and Class "D" felony convictions. There will be an increase in the number of minority offenders supervised in the correctional system.

Fiscal Impact

The fiscal impact is estimated to be an increased cost to the State General Fund of \$17,000 in FY 2014 and \$69,200 in FY 2015. The table below shows the impact by areas within the criminal justice system. Costs will continue to increase in future fiscal years because the length of stay in the corrections system exceeds one year.

Estimated Fiscal Impact by Funding Source

	<u>FY 2014</u>			<u>FY 2015</u>		
	<u>County Budgets</u>	<u>General Fund</u>	<u>Total</u>	<u>County Budgets</u>	<u>General Fund</u>	<u>Total</u>
County Jail	\$ 3,000	\$ 0	\$ 3,000	\$ 6,300	\$ 0	\$ 6,300
State Prison	0	3,200	3,200	0	19,300	19,300
CBC	0	4,600	4,600	0	29,400	29,400
Judicial Branch	0	2,900	2,900	0	5,800	5,800
Indigent Defense	0	6,300	6,300	0	14,700	14,700
Total	\$ 3,000	\$ 17,000	\$ 20,000	\$ 6,300	\$ 69,200	\$ 75,500

The fiscal impact to the Judicial Branch and indigent defense reflects the increased cost for aggravated misdemeanor and Class "D" felony cases, minus the costs for simple misdemeanor cases.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Office of the State Public Defender
State Court Administrator's Office

/s/ Holly M. Lyons

March 14, 2013

The fiscal note for this bill was prepared pursuant to **Joint Rule 17** and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

SENATE BILL 679

P5, E1, E2

2lr2983
CF 2lr1606

By: **Senator Forehand**

Introduced and read first time: February 3, 2012

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **General Assembly – Fiscal Notes – Criminal Justice Policy Impact Statements**

3 FOR the purpose of requiring a fiscal note for a bill to include a criminal justice policy
4 impact statement under certain circumstances; requiring the criminal justice
5 policy impact statement to contain certain information; requiring the
6 Department of Legislative Services to prepare the criminal justice policy impact
7 statement by requesting certain information from certain entities; prohibiting
8 certain entities from being required to prepare certain information for inclusion
9 in the criminal justice policy impact statement; and generally relating to
10 criminal justice policy impact statements in fiscal notes.

11 BY repealing and reenacting, with amendments,
12 Article – State Government
13 Section 2–1505(e)
14 Annotated Code of Maryland
15 (2009 Replacement Volume and 2011 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – State Government**

19 2–1505.

20 (e) (1) A fiscal note for a bill shall contain an estimate of the fiscal impact
21 of the bill on the revenues and expenditures of the State government and of local
22 governments:

23 (i) during the year in which the bill is to become effective and
24 the next 4 years after that year; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) if the full fiscal impact of a bill is not expected to occur
2 during those years, during each year until and the first year during which that impact
3 is expected to occur.

4 (2) If a bill, as introduced or amended, imposes a mandate on a local
5 government unit, the fiscal note for the bill shall contain:

6 (i) a statement that clearly identifies the imposition of the
7 mandate; and

8 (ii) an estimate of the fiscal impact of the mandate and, if
9 applicable and if data is available, the effect on local property tax rates.

10 (3) If a bill, as introduced or amended, requires a mandated
11 appropriation, the fiscal note for the bill shall contain:

12 (i) a statement that clearly identifies the imposition of the
13 mandated appropriation; and

14 (ii) an estimate of the fiscal impact of the mandated
15 appropriation.

16 (4) (I) A FISCAL NOTE FOR A BILL SHALL INCLUDE A CRIMINAL
17 JUSTICE POLICY IMPACT STATEMENT IF THE BILL, AS INTRODUCED OR
18 AMENDED, DOES THE FOLLOWING:

19 1. CREATES A CRIMINAL OFFENSE;

20 2. SIGNIFICANTLY ALTERS THE ELEMENTS OF AN
21 EXISTING CRIMINAL OFFENSE;

22 3. ALTERS THE PENALTIES APPLICABLE TO A
23 CRIMINAL OFFENSE; OR

24 4. ALTERS EXISTING SENTENCING, PAROLE, OR
25 PROBATION PROCEDURES.

26 (II) THE CRIMINAL JUSTICE POLICY IMPACT STATEMENT
27 REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL INCLUDE, TO
28 THE EXTENT THE INFORMATION IS AVAILABLE, THE FOLLOWING:

29 1. AN ESTIMATE OF THE NUMBER OF CRIMINAL
30 CASES THAT WOULD BE AFFECTED BY THE BILL DURING THE YEAR IN WHICH
31 THE BILL IS TO BECOME EFFECTIVE AND ANY ESTIMATES AVAILABLE FOR THE
32 FOLLOWING YEARS;

1 2. AN ESTIMATE OF THE FISCAL IMPACT OF
2 DETAINING, IMPRISONING, OR IMPOSING OTHER PENALTIES ON INDIVIDUALS IN
3 ACCORDANCE WITH THE PROVISIONS OF THE BILL DURING THE YEAR IN WHICH
4 THE BILL IS TO BECOME EFFECTIVE AND ANY ESTIMATES AVAILABLE FOR THE
5 FOLLOWING YEARS;

6 3. THE POTENTIAL IMPACT OF THE BILL ON RACIAL
7 AND ETHNIC GROUPS;

8 4. THE POTENTIAL IMPACT OF THE BILL ON
9 EXISTING STATE OR COUNTY DETENTION FACILITIES, CORRECTIONAL
10 FACILITIES, OR OTHER PROGRAMS USED FOR SENTENCING;

11 5. WHETHER THE BILL IS LIKELY TO CREATE A NEED
12 FOR ADDITIONAL DETENTION OR CORRECTION FACILITIES OR JUVENILE
13 PLACEMENT SERVICES;

14 6. THE ESTIMATE OF THE FISCAL IMPACT
15 ASSOCIATED WITH THE NEED FOR ADDITIONAL JUDICIAL RESOURCES FOR
16 LEGAL REPRESENTATION AND COURT SERVICES DURING THE YEAR IN WHICH
17 THE BILL IS TO BECOME EFFECTIVE AND ANY ESTIMATES AVAILABLE FOR THE
18 FOLLOWING YEARS.

19 (III) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL
20 PREPARE THE CRIMINAL JUSTICE POLICY IMPACT STATEMENT BY REQUESTING
21 AVAILABLE INFORMATION FROM THE FOLLOWING:

22 1. THE DEPARTMENT OF JUVENILE SERVICES;

23 2. THE DEPARTMENT OF PUBLIC SAFETY AND
24 CORRECTIONAL SERVICES;

25 3. THE JUDICIARY; AND

26 4. ANY OTHER STATE, COUNTY, OR LOCAL ENTITY
27 THAT THE DEPARTMENT OF LEGISLATIVE SERVICES DEEMS NECESSARY.

28 (IV) THE DEPARTMENT OF LEGISLATIVE SERVICES OR ANY
29 OTHER STATE, COUNTY, OR LOCAL ENTITY MAY NOT BE REQUIRED TO PREPARE
30 INFORMATION THAT IS NOT READILY AVAILABLE FOR INCLUSION IN THE
31 CRIMINAL JUSTICE POLICY IMPACT STATEMENT.

1 **[(4)] (5)** A fiscal note shall identify the sources of the information
2 that the Department used in preparing the estimates of fiscal impact.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2012.

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 679
Rules

(Senator Forehand)

General Assembly - Fiscal Notes - Criminal Justice Policy Impact Statements

This bill requires a fiscal and policy note for a bill to include a criminal justice policy impact statement under specified circumstances. The bill specifies the information that must be included, to the extent the information is available, in the criminal justice policy impact statement.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: The bill's requirements can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: A fiscal and policy note must include a criminal justice policy impact statement if the bill, as introduced or amended, does the following: (1) creates a criminal offense; (2) significantly alters the elements of an existing criminal offense; (3) alters the penalties applicable to a criminal offense; or (4) alters existing sentencing, parole, or probation procedures.

To the extent the information is available, the criminal justice policy impact statement must include the following:

- an estimate of the number of criminal cases that would be affected by the bill during the year in which the bill is to become effective and any estimates available for the following years;
- an estimate of the fiscal impact of detaining, imprisoning, or imposing other penalties on individuals in accordance with the provisions of the bill during the year in which the bill is to become effective and any estimates available for the following years;
- the potential impact of the bill on racial and ethnic groups;
- the potential impact of the bill on existing State or county detention facilities, correctional facilities, or other programs used for sentencing;
- whether the bill is likely to create a need for additional detention or correctional facilities or juvenile placement services; and
- the estimate of the fiscal impact associated with the need for additional judicial resources for legal representation and court services during the year in which the bill is to become effective and any estimates available for the following years.

The Department of Legislative Services (DLS) must prepare the criminal justice policy impact statement by requesting available information from (1) the Department of Juvenile Services (DJS); (2) the Department of Public Safety and Correctional Services (DPSCS); (3) the Judiciary; and (4) any other State, county, or local entity that DLS deems necessary. DLS or any other entity may not be required to prepare information that is not readily available for inclusion in the criminal justice policy impact statement.

Current Law: DLS must prepare a fiscal and policy note for each bill considered by the General Assembly. In general, a standing committee of the General Assembly may not vote on a bill unless it is accompanied by a fiscal and policy note. A fiscal and policy note prepared by DLS must contain:

- an estimate of the fiscal impact of the bill on the revenues and expenditures of the State government and of local governments for five years, beginning with the year the bill takes effect. If the bill's full fiscal impact is not expected to occur during that time, the analysis must include each year until and including the first year during which the impact occurs;
- for bills that require a mandated appropriation in the State budget, a statement to that effect and an estimate of the fiscal impact of the mandated appropriation;

- for bills that impose a mandate on a unit of local government, a statement to that effect and an estimate of the fiscal impact of the local mandate, including the effect on local property tax rates;
- an analysis of the bill's economic impact on small businesses; and
- a list of sources of information used in preparing the fiscal impact estimates.

DLS must prepare a revised fiscal and policy note as soon as possible after the adoption of an amendment that changes the fiscal impact of a bill. A revised fiscal and policy note is typically prepared when a bill passes third reading in the house of origin and crosses over for consideration by the second house.

State and Local Fiscal Effect: Although fiscal and policy notes do not currently include a specific criminal justice policy impact statement, to a large extent, the bill's requirements are already being met. For example, the bill summary portion of each fiscal and policy note typically states if a bill creates a criminal offense; alters the elements of an existing criminal offense; alters penalties applicable to a criminal offense; or alters existing sentencing, parole, or probation procedures. In addition, if a State or local entity provides a credible estimate of the number of cases that would be impacted by the bill's provisions, that information is included as part of the fiscal analysis. DJS, DPSCS, and the Judiciary are already queried when preparing relevant estimates to determine any potential impact on their respective operations. Finally, standard language regarding incarceration costs is generally included in any fiscal and policy note involving criminal penalties. This language details incarceration costs relating to per diem State grants to local detention facilities, per diem operating costs of local detention facilities, and the average cost of housing a new Division of Correction inmate.

Although the fiscal impact is often not quantified for a majority of fiscal and policy notes involving these types of expenditures, DLS believes that, in general, the relevant entities are providing any credible information that is readily available, particularly considering the volume of requests that are received and the limited time available during which a request for fiscal impact information must be prepared and processed.

Information regarding the potential impact of a bill on racial and ethnic groups is not currently included in fiscal and policy notes. To the extent that the relevant entities can find readily available and credible information and provide it to DLS, that information can be incorporated into fiscal and policy notes using existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 709 (Delegate Valentino-Smith, *et al.*) - Rules and Executive Nominations.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Office of the Public Defender; State's Attorneys' Association; Maryland Association of Counties; Charles, Frederick, and Montgomery counties; Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2012
ncs/lgc

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Senate Rules Committee

Voting Record - 2012 Session

Bill/Resolution Number: SB 679

Vote Date: 2/24/12

Final Action: UNF

Motion:

- Favorable
 Favorable with Amendment
 Unfavorable
 Withdrawn by Sponsor
 No Motion
 Referred to Interim - Summer Study
 Re-referred to: _____

Name	Yea	Nay	Abstain	Excused	Absent	Amendment Numbers, Consent Bill lists, Other
KLAUSMEIER, K., CHAIR	✓					
FROSH, B., VICE CHAIR					✓	
BRINKLEY, D.	✓					
COLBURN, R.	✓					
CURRIE, U.	✓					
DYSON, R.	✓					
EDWARDS, G.	✓					
KASEMEYER, E.	✓					
MCFADDEN, N.	✓					
MIDDLETON, T.	✓					
MILLER, T.					✓	
Totals	9				2	

Committee Reporter: ALLISON SPAIGHT

CHAPTER 260B

DELINQUENCY

	GENERAL PROVISIONS		
260B.001	TITLE, INTENT, AND CONSTRUCTION.	260B.175	TAKING CHILD INTO CUSTODY.
260B.002	POLICY ON DISPROPORTIONATE MINORITY CONTACT.	260B.176	RELEASE OR DETENTION.
260B.005	SCOPE OF VICTIM RIGHTS.	260B.178	DETENTION HEARING.
260B.007	DEFINITIONS.	260B.181	PLACE OF TEMPORARY CUSTODY; SHELTER CARE FACILITY.
	EXPERT ASSISTANCE	260B.185	EXTENSION OF DETENTION PERIOD.
260B.050	EXPERT ASSISTANCE.	260B.188	CHILDREN IN CUSTODY; RESPONSIBILITY FOR MEDICAL CARE.
	COUNTY HOME SCHOOLS		DISPOSITION
260B.060	COUNTY HOME SCHOOLS.	260B.193	DISPOSITIONS; GENERAL PROVISIONS.
260B.070	EXISTING HOME SCHOOLS CONTINUED.	260B.198	DISPOSITIONS; DELINQUENT CHILD.
	DETENTION HOMES	260B.199	PLACEMENT OF JUVENILE OFFENDERS AT MINNESOTA CORRECTIONAL FACILITY-RED WING.
260B.080	DETENTION HOMES.	260B.201	MANDATORY COMMITMENT TO COMMISSIONER OF CORRECTIONS.
	JURISDICTION	260B.225	JUVENILE TRAFFIC OFFENDER; PROCEDURES; DISPOSITIONS.
260B.101	JURISDICTION.	260B.235	PETTY OFFENDERS; PROCEDURES; DISPOSITIONS.
260B.103	TRANSFERS FROM OTHER COURTS.	260B.240	COUNTY RESPONSIBILITY FOR TRANSITIONAL SERVICES PLANS.
260B.105	VENUE.	260B.245	EFFECT OF JUVENILE COURT PROCEEDINGS.
	CERTIFICATION	260B.255	JUVENILE COURT DISPOSITION BARS CRIMINAL PROCEEDING.
260B.125	CERTIFICATION.		COSTS AND EXPENSES
	EXTENDED JURISDICTION JUVENILE PROSECUTION		
260B.130	EXTENDED JURISDICTION JUVENILE PROSECUTIONS.		CONTRIBUTING TO DELINQUENCY
	PROCEDURES		260B.335
260B.141	PETITION.	260B.331	CIVIL JURISDICTION OVER PERSONS CONTRIBUTING TO DELINQUENCY OR STATUS AS A JUVENILE PETTY OFFENDER.
260B.143	PROCEDURE; JUVENILE PETTY AND MISDEMEANOR OFFENDERS.		REHEARING AND APPEAL
260B.151	SUMMONS; NOTICE.	260B.411	NEW EVIDENCE.
260B.152	SERVICE OF SUMMONS, NOTICE.	260B.415	APPEAL.
260B.154	FAILURE TO OBEY SUMMONS OR SUBPOENA; CONTEMPT, ARREST.		CONTEMPT
260B.157	INVESTIGATION; PHYSICAL AND MENTAL EXAMINATION.	260B.421	CONTEMPT.
260B.159	CLASSIFICATION SYSTEM FOR JUVENILE OFFENDERS.		MISCELLANEOUS
260B.163	HEARING.		
260B.168	COMPLIANCE WITH INDIAN CHILD WELFARE ACT.	260B.425	CRIMINAL JURISDICTION FOR CONTRIBUTING TO STATUS AS A JUVENILE PETTY OFFENDER OR DELINQUENCY.
	RECORDS	260B.441	COST, PAYMENT.
260B.171	RECORDS.	260B.446	DISTRIBUTION OF FUNDS RECOVERED FOR ASSISTANCE FURNISHED.
	DETENTION		

260B.0001 MS 2006 [Renumbered 15.001]

GENERAL PROVISIONS

260B.001 TITLE, INTENT, AND CONSTRUCTION.

Subdivision 1. **Citation.** Sections 260B.001 to 260B.446 may be cited as the delinquency provisions of the Juvenile Court Act.

Subd. 2. **Delinquency.** The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth.

Subd. 3. **Construction.** The laws relating to juvenile courts shall be liberally construed to carry out the purpose specified in subdivision 2.

History: 1999 c 139 art 2 s 1

260B.002 POLICY ON DISPROPORTIONATE MINORITY CONTACT.

It is the policy of the state of Minnesota to identify and eliminate barriers to racial, ethnic, and gender fairness within the criminal justice, juvenile justice, corrections, and judicial systems, in support of the fundamental principle of fair and equitable treatment under law.

History: 2009 c 59 art 3 s 1

260B.005 SCOPE OF VICTIM RIGHTS.

The rights granted to victims of crime in sections 611A.01 to 611A.06 are applicable to adult criminal cases, juvenile delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs, and proceedings involving any other act committed by a juvenile that would be a crime as defined in section 609.02, if committed by an adult.

History: 1999 c 139 art 2 s 2

260B.007 DEFINITIONS.

Subdivision 1. **Scope.** As used in this chapter, the terms defined in this section have the same meanings given to them.

Subd. 2. **Agency.** "Agency" means the local social services agency or a licensed child-placing agency.

Subd. 3. **Child.** "Child" means an individual under 18 years of age and includes any minor alleged to have been delinquent or a juvenile traffic offender prior to having become 18 years of age.

Subd. 4. **Child-placing agency.** "Child-placing agency" means anyone licensed under sections 245A.01 to 245A.16 and 252.28, subdivision 2.

Subd. 5. **Court.** "Court" means juvenile court unless otherwise specified in this section.

Subd. 6. **Delinquent child.** (a) Except as otherwise provided in paragraphs (b) and (c), "delinquent child" means a child:

(1) who has violated any state or local law, except as provided in section 260B.225, subdivision 1, and except for juvenile offenders as described in subdivisions 16 to 18;

MINNESOTA SENTENCING
GUIDELINES COMMISSION

Report to the Legislature

January 15, 2013

Minnesota Sentencing Guidelines Commission

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county to comparative data on how an offense has been sentenced from one county to another during a specific timeframe.

Fiscal/Racial-Impact Statements

During the 2012 Legislative Session, Commission staff prepared 24 fiscal impact statements for proposed legislation. These impact statements include details as to any increase or decrease in adult offender populations, the estimated net increase in state correctional facility beds, and the impact on local confinement. Staff provided the requested information within the time requirements set by the legislature.

In 2006, the Commission began providing the legislature with racial-impact notes on proposed crime bills when a disparate impact was anticipated. During the 2012 Legislative Session, one racial-impact note was prepared: House File 1665, proposed to amend the list of offenses defined as crimes of violence in Minn. Stat. § 624.712. The expansion of this list would have increased racial disparity in Minnesota's prison population because a disproportionate number of offenders sentenced to felony fifth-degree assault, felony domestic assault, and domestic assault by strangulation are black as compared to the overall felony population in Minnesota. This bill was not enacted.

Collaboration with Criminal Justice Agencies

The Commission's knowledge of felony sentencing and practice makes the Commission a valued contributor to criminal justice policy discussions. Each year, Commission staff works with the Department of Corrections to generate prison bed projections. And in 2012, MSGC staff served on the Criminal and Juvenile Justice Information Task Force, Supreme Court Criminal Justice Forum, and State Court Administration Drug Court Evaluation Committee. Additionally, the Executive Director serves as an ex-officio member of Minnesota's Civil Commitment Advisory Task Force and as an officer for the National Association of Sentencing Commissions, ensuring that Minnesota is tied into national trends in sentencing policy.

**Racial Impact for H.F. 306:
Juvenile Certification & EJJ - Age Lowered**
Minnesota Sentencing Guidelines Commission
February 4, 2011

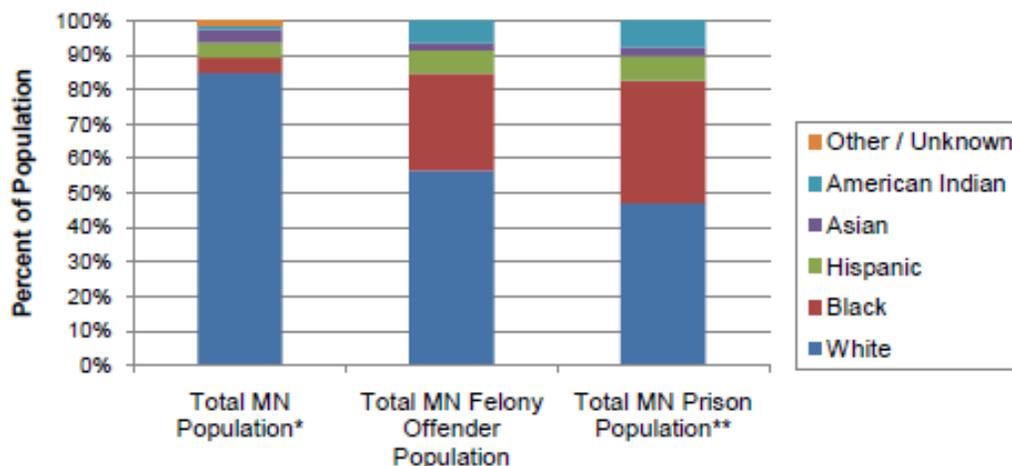
By providing the following information on race, MSGC seeks to enrich the discussion on how minorities in Minnesota are affected by changes in sentencing policy. If a significant racial disparity can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating additional disparity in Minnesota's criminal justice system. Just as with the Commission's fiscal impact notes, the agency does not intend to comment on whether or not a particular bill should be enacted. Rather, it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons.

According to the U.S. Census population estimates for 2009 (the most current estimates available at this time), approximately 85 percent of Minnesota's population is white. The composition of the remaining 15 percent is as follows: 4.5 percent black; 4.3 percent Hispanic; 3.7 percent Asian; 1.1 percent American Indian; and roughly 1.5 percent who identify themselves with two or more races.

In contrast, MSGC monitoring data shows the following racial make-up of the 2009 felony offender population: 56.5 percent white; 28.1 percent black; 6.5 percent American Indian; 6.8 percent Hispanic; and 2.1 percent Asian.

According to the Minnesota Department of Corrections, the racial composition of the prisons on July 1, 2009 was as follows: 47.1 percent white; 35.4 percent black; 7.8 percent American Indian; 7.3 percent Hispanic; and 2.4 percent Asian.

**Comparison of Racial Composition Among Populations:
2009**



* Source for "Total MN Population": [U.S. Census Bureau 2009 Population Estimates](#).

** Source for "Total MN Prison Population": [MN Department of Corrections Adult Inmate Profile: 7/1/09](#).

The provisions of H.F. 306 could increase racial disparity in prison populations, due to a higher percentage of minority offenders sentenced for the offenses included in the definition of "violent juvenile offense." From 2001-09, there were 12 offenders who were 14 years old at the time of offense who were sentenced in adult court for one of the specified violent juvenile offenses. Of those, three offenders were white (25.0%), four were black (33.3%), four were American Indian (33.3%), and one was Hispanic (8.3%). Two of these offenders initially received stayed sentences, but were eventually revoked and sentenced to prison. Therefore, all 12 offenders ended up in the prison population.

Assuming similar racial percentages applied to the estimated prison bed impact of H.F. 306, this would mean a higher percentage of American Indian offenders would receive prison sentences, compared with the 2009 prison population.

**Racial Impact Note for H.F. 1665:
Expansion of List of Crimes of Violence**
Minnesota Sentencing Guidelines Commission
February 22, 2012

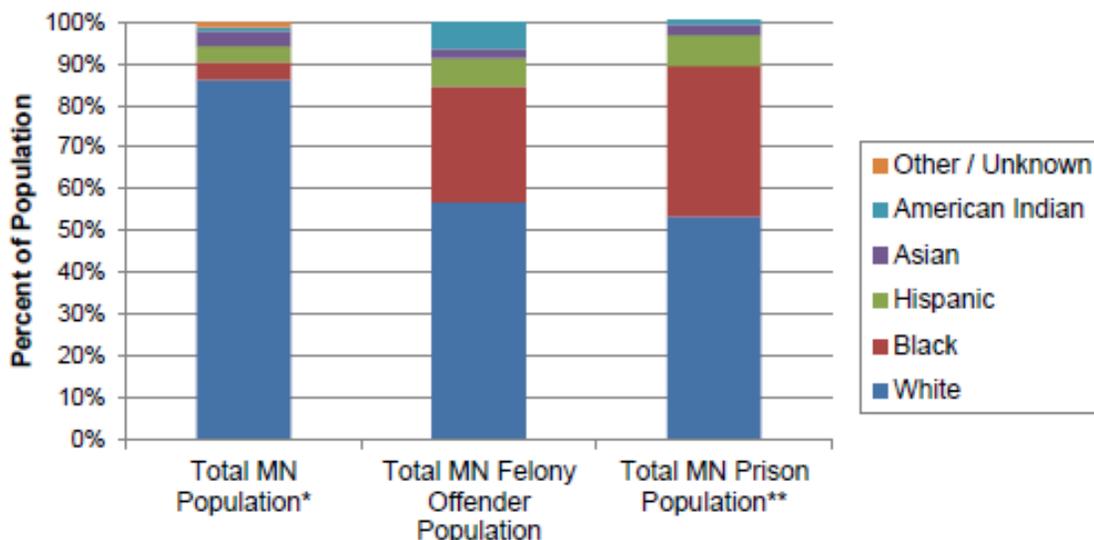
By providing the following information on race, MSGC seeks to enrich the discussion on how minorities in Minnesota are affected by changes in sentencing policy. If a significant racial disparity can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating additional disparity in Minnesota's criminal justice system. Just as with the Commission's fiscal impact notes, the agency does not intend to comment on whether or not a particular bill should be enacted. Rather, it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons.

According to the U.S. Census population estimates for 2010, approximately 86.1 percent of Minnesota's population is white. The composition of the remaining 13.9 percent is as follows: 4.3 percent black; 3.7 percent Hispanic; 3.6 percent Asian; 1.0 percent American Indian; and roughly 1.2 percent who identify themselves with two or more races, another race, or as Pacific Islander.

In contrast, MSGC monitoring data shows the following racial make-up of the 2010 felony offender population: 56.8 percent white; 27.8 percent black; 6.5 percent American Indian; 6.6 percent Hispanic; and 2.3 percent Asian.

According to the Minnesota Department of Corrections, the racial composition of the prisons on July 1, 2010 was as follows: 53.4 percent white; 36.0 percent black; 8.1 percent American Indian; 7.4 percent Hispanic; and 2.5 percent Asian.

**Comparison of Racial Composition Among Populations:
2010**



* Source for "Total MN Population 18 years and older": [U.S. Census Bureau, Census Summary File 1, Table P11.](#)

** Source for "Total MN Prison Population": [MN Department of Corrections Adult Inmate Profile: 7/1/10.](#)

Bill Description

This bill amends the list of offenses defined as crimes of violence in Minn. Stat. § 624.712. A person who had been convicted of committing a crime of violence is prohibited from possession of firearms under Minn. Stat. § 609.165 or Minn. Stat. § 624.713, subd. 1(2). The offenses added are felony convictions for: fifth-degree assault under Minn. Stat. § 609.224; domestic assault under Minn. Stat. § 609.2242; and domestic assault by strangulation under Minn. Stat. § 609.2247.

The effective date is August 1, 2012, and applies to crimes committed on or after that date.

Racial Disparity Impact

The expansion of the list of crimes of violence as presented in H.F. 1665, may increase racial disparity in Minnesota's prison population because a disproportionate number of offenders sentenced to felony fifth-degree assault, felony domestic assault, and domestic assault by strangulation are black as compared to the overall felony population in Minnesota. Of the offenders sentenced in 2010 for the offenses added to the list of crimes of violence, 43 percent were white and 39 percent were black. This is compared to the overall racial make-up of the 2010 felony offender population, which is 56.8 percent white and 27.8 percent black.

**Racial Impact Note for H.F. 285:
Expansion of List of Crimes of Violence**
Minnesota Sentencing Guidelines Commission
February 15, 2013

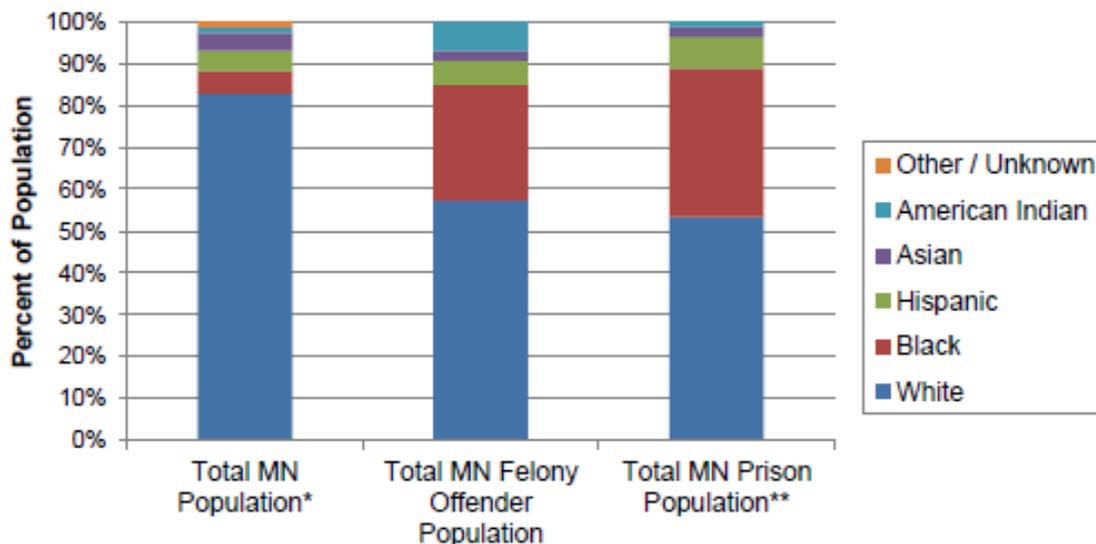
By providing the following information on race, MSGC seeks to enrich the discussion on how minorities in Minnesota are affected by changes in sentencing policy. If a significant racial disparity can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating additional disparity in Minnesota's criminal justice system. Just as with the Commission's fiscal impact notes, the agency does not intend to comment on whether or not a particular bill should be enacted. Rather, it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons.

According to the U.S. Census population estimates for 2011, approximately 82.8 percent of Minnesota's population is white. The composition of the remaining 17.2 percent is as follows: 5.4 percent black; 4.9 percent Hispanic; 4.2 percent Asian; 1.3 percent American Indian; and roughly 2.3 percent who identify themselves with two or more races, another race, or as Pacific Islander (Figure 1).

In contrast, MSGC monitoring data shows the following racial make-up of the 2011 felony offender population: 57.3 percent white; 27.5 percent black; 6.8 percent American Indian; 5.9 percent Hispanic; and 2.4 percent Asian (Figure 1).

According to the Minnesota Department of Corrections, the racial composition of the prisons on July 1, 2011 was as follows: 53.3 percent white; 35.5 percent black; 8.8 percent American Indian; 7.5 percent Hispanic; and 2.4 percent Asian (Figure 1).

Figure 1. Comparison of Racial Composition Among Populations: 2011



* Source for "Total MN Population 18 years and older": [U.S. Census Bureau, Census Summary File 1, Table P11.](#)

** Source for "Total MN Prison Population": [MN Department of Corrections Adult Inmate Profile: 7/1/11.](#)

Bill Description

This bill amends the list of offenses defined as crimes of violence in Minn. Stat. § 624.712, subd. 5. A person who had been convicted of committing a crime of violence is prohibited from possession of firearms under Minn. Stat. § 609.165 or Minn. Stat. § 624.713, subd. 1(2). The bill would add the following offenses to the definition of crime of violence: felony assault in the fifth degree under Minn. Stat. § 609.224, subd. 4; felony domestic assault under Minn. Stat. § 609.2242, subd. 4; domestic assault by strangulation under Minn. Stat. § 609.2247; and juveniles not to possess firearms under Minn. Stat. § 624.713, subd. 1(1).

The bill adds language to certain persons (felons and juveniles) not to possess firearms, Stat. § 624.713, subd. 1, that prohibits possession of ammunition as well as firearms. The ban on possession of ammunition applies to persons prohibited from possession of firearms in clauses (1) through (11) of Stat. § 624.713, subd. 1.

The bill also adds an aiding and abetting provision to certain persons (felons and juveniles) not to possess firearms under Minn. Stat. § 624.713, making a person criminally liable for a violation committed by another person under this section if the person aids or abets the violation within the meaning given in Minn. Stat. § 609.05.

Racial Disparity Impact

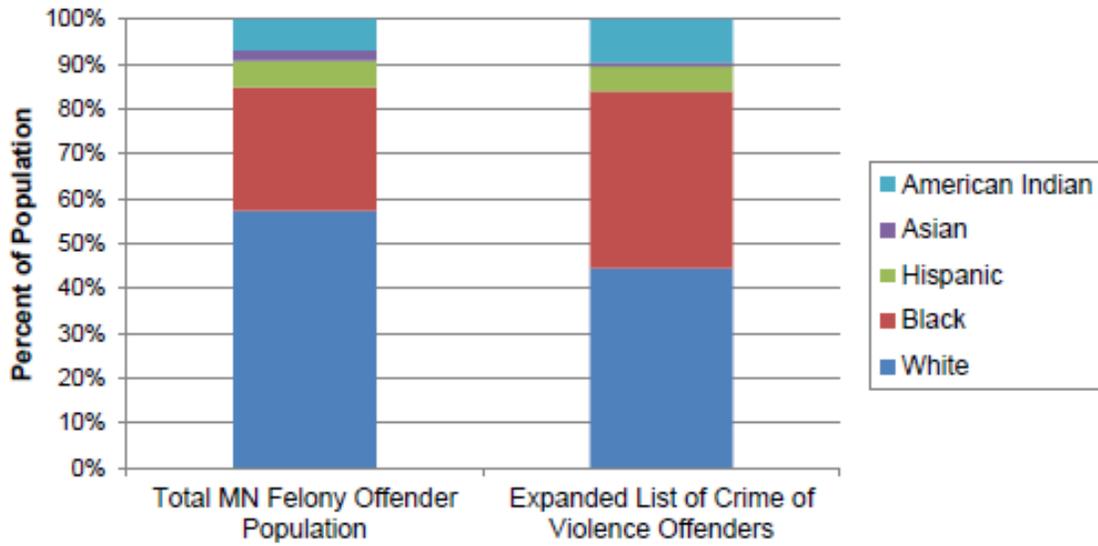
Of the offenders sentenced in 2011 for the offenses that would be added to the list of crimes of violence under this bill, 44.5 percent were white, 39.5 percent were black, and 9.5 percent were American Indian. This is compared to the overall racial make-up of the 2011 felony offender population, which is: 57.3 percent white, 27.5 percent black, and 6.8 percent American Indian (Figure 2).

Information from the State Court Administrator's Office indicates that over the last four years, an average of 40 juveniles per year were adjudicated delinquent for possession of a firearm under Minn. Stat. § 624.713, subd. 1(1). Of those juveniles adjudicated, 8.2 percent were white and 67.7 percent were black. The other non-black minorities make up 20.3 percent.¹

The Sentencing Guidelines Commission reported in a fiscal note for House File 285 - Firearm, Lawful Possession Modified, that this bill, as introduced, could result in the need for an additional 9 to 34 prison beds per year. The expansion of the list of crimes of violence may increase the racial disparity in Minnesota's prison population because a disproportionate number of adult felony offenders sentenced for convictions of felony assault in the fifth degree, felony domestic assault, domestic assault by strangulation, and juveniles not to possess firearms, are black or American Indian as compared to the overall felony population.

¹ Combined cases for reporting purposes: Hispanic, Asian, American Indian, juveniles who identified with two or more races, another race, or as Pacific Islander. Additionally, in roughly 4% of the cases, the data were missing or the juvenile did not disclose his or her race.

Figure 2. Total MN Felony Offenders vs. Expanded List of Crime of Violence Offenders: 2011





State Sen. Chip Shields

June 14, 2013
PRESS RELEASE

Media Contact:
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503-986-1722
<http://www.leg.state.or.us/shieldsc/news.htm>

On Broad Bipartisan Vote, Oregon House Passes Bill to Assess Racial Impact of Proposed Legislation

Championed by Senator Chip Shields, the bill allows legislators to obtain information on how proposed legislation would impact racial minorities

SALEM - In a show of broad bipartisan support, the Oregon House of Representatives passed legislation today that gives state legislators the ability to obtain information on how a proposed law would impact racial minorities.

Senate Bill 463B requires the Criminal Justice Commission to issue racial impact statements when proposed legislation relates to criminal sentencing or child welfare policies and when requested by two legislators, one from each major political party.

First enacted by the State of Iowa in 2008, racial impact statements are a relatively new tool developed to estimate the disparate racial impacts of legislation, similar to the ways in which fiscal impact statements assess budgetary effects or environmental impact statements assess ecological effects of proposed policies.

"Like in the State of Iowa, this bill will allow Oregon legislators to make informed decisions when crafting solutions to crime, child welfare, and delinquency," said Senator Jackie Winters (R-Salem), the co-chief sponsor of the bill and only African American senator in the Oregon State Senate. Winters is the Co-Chair of the budget Subcommittee on Public Safety and also sits on the Subcommittee on Human Services. She added, "This bill also helps to ensure that racial justice costs are included in the public dialogue regarding criminal justice choices."

Senator Chip Shields (D-N/NE Portland) first drafted the bill in 2009 with attorney Jess Barton and Marc Mauer of the Sentencing Project in an effort to address the well-documented racial disparities in the Oregon criminal justice and human services systems. According to the Oregon Department of Corrections, African Americans make up about 2 percent of Oregon's general population but about 10 percent of Oregon's

prison population. African Americans in Oregon are likewise six times more likely to be in prison than whites, and nationally African American males are more likely to be imprisoned than receive a 4-year college degree.

"This bill gives legislators an important tool to use in assessing whether policies we propose give a fair shake to every Oregonian," said Senator Shields. "After years of hard work I'm proud the bill garnered such broad bipartisan support this session and I'm thrilled to see it move forward."

The bill passed out of the Senate on a 27-2 vote and out of the House on a 58-1 vote with an amendment requiring that two legislators, one from each party, request the statement and to sunset the legislation in 2018. The bill will now come back to the floor of the Senate for a vote to concur with the House amendment and then it will be off to the Governor to sign into law.

###

For more information about SB 463B, please call Amanda Hess at 503-986-1722, or email the office at sen.chipshields@state.or.us

More information on The Sentencing Project's work on racial impact statements can be found here: http://www.sentencingproject.org/doc/rd_abaarticle.pdf

CHAPTER 600

AN ACT

SB 463

Relating to racial and ethnic impact statements; creating new provisions; and amending ORS 137.656 and 251.185.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "Criminal offender population" means all persons who are convicted of a crime or adjudicated for an act that, if committed by an adult, would constitute a crime.

(b) "Recipients of human services" means all persons who are found to be within the jurisdiction of the juvenile court under ORS 419B.100 or who receive child welfare services described in ORS 418.005.

(2) To obtain a racial and ethnic impact statement described in this section, one member of the Legislative Assembly from each major political party must sign a written request. Upon receipt of the written request, the Oregon Criminal Justice Commission shall prepare a racial and ethnic impact statement that describes the effects of proposed legislation on the racial and ethnic composition of:

- (a) The criminal offender population; or
- (b) Recipients of human services.

(3) A racial and ethnic impact statement must be impartial, simple and understandable and must include, for racial and ethnic groups for which data are available, the following:

(a) An estimate of how the proposed legislation would change the racial and ethnic composition of the criminal offender population or recipients of human services;

(b) A statement of the methodologies and assumptions used in preparing the estimate; and

(c) If the racial and ethnic impact statement addresses the effect of proposed legislation on the criminal offender population, an estimate of the racial and ethnic composition of the crime victims who may be affected by the proposed legislation.

(4) The commission shall adopt rules to carry out the provisions of this section.

SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS chapter 250.

SECTION 3. (1) To obtain a racial and ethnic impact statement described in this section, one member of the Legislative Assembly from each major political party must sign a written request. Upon receipt of the written request, the Oregon Criminal Justice Commission shall prepare a racial and ethnic impact statement that describes the effects of a state measure on the racial and ethnic composition of:

(a) The criminal offender population, as defined in section 1 of this 2013 Act; or

(b) Recipients of human services, as defined in section 1 of this 2013 Act.

(2) The statement must be impartial, simple and understandable and must include the information described in section 1 (3) of this 2013 Act.

(3) If the commission has prepared a racial and ethnic impact statement for a state measure, not later than the 99th day before a special election held on the date of a primary election or any general election at which the state measure is to be submitted to the people, the commission shall file the statement with the Secretary of State.

(4) Not later than the 95th day before the election, the Secretary of State shall hold a hearing in Salem upon reasonable statewide notice to receive suggestions for changes to the statement or to receive other information. At the hearing, any person may submit suggested changes or other information orally or in writing. Written suggestions and any other information also may be submitted at any time before the hearing.

(5) The commission shall consider suggestions and any other information submitted under subsection (4) of this section and may file a revised statement with the Secretary of State not later than the 90th day before the election at which the measure is to be voted upon.

(6) The Secretary of State shall certify the statement not later than the 90th day before the election at which the measure is to be voted upon.

(7) All statements prepared under this section shall be made available to the public.

(8) A failure to prepare, file or certify a statement does not prevent inclusion of the measure in the voters' pamphlet.

SECTION 4. (1) A state agency that awards grants shall require that each grant application include a racial and ethnic impact statement that must contain the following information:

(a) Any disproportionate or unique impact of proposed policies or programs on minority persons in this state;

(b) A rationale for the existence of policies or programs having a disproportionate or unique impact on minority persons in this state; and

(c) Evidence of consultation with representatives of minority persons in cases in which a proposed policy or program has a disproportionate or unique impact on minority persons in this state.

(2) The Oregon Department of Administrative Services shall create and distribute a racial and ethnic impact statement form for state agencies and shall ensure that the statement is included in applications for grants awarded by state agencies.

(3) The racial and ethnic impact statement shall be used for informational purposes.

(4) The requirements of this section apply only to grants awarded to corporations or other legal entities other than natural persons.

(5) As used in this section:

(a) "Minority persons" includes individuals who are women, persons with disabilities, African-Americans, Hispanics, Asians or Pacific Islanders, American Indians and Alaskan Natives.

(b) "State agency" means the executive department as defined in ORS 174.112.

SECTION 5. Sections 1 to 4 of this 2013 Act are repealed on January 2, 2018.

SECTION 6. ORS 251.185 is amended to read:

251.185. (1) The Secretary of State shall have printed in the voters' pamphlet for a general election or any special election a copy of the title and text of each state measure to be submitted to the people at the election for which the pamphlet was prepared. The pamphlet must include the procedures for filing a complaint under ORS 260.345. Each measure shall be printed in the pamphlet with:

(a) The number and ballot title of the measure;

(b) The financial estimates and any statement prepared for the measure under ORS 250.125;

(c) The explanatory statement prepared for the measure;

(d) Arguments relating to the measure and filed with the Secretary of State;

(e) Any racial and ethnic impact statement prepared for the measure under section 3 of this 2013 Act; and

[(e)] (f) Any statement submitted for the measure by a citizen panel under ORS 250.141.

(2) A county measure or measure of a metropolitan service district organized under ORS chapter 268, and ballot title, explanatory statement and arguments relating to the measure, filed by the county or metropolitan service district under ORS 251.285 shall be included in the voters' pamphlet described in subsection (1) of this section if required under ORS 251.067.

SECTION 7. ORS 137.656 is amended to read:

137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effectiveness and efficiency of state and local criminal justice systems by providing a centralized and impartial forum for statewide policy development and planning.

(2) The primary duty of the commission is to develop and maintain a state criminal justice policy and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses public safety, offender accountability, crime reduction and prevention and offender treatment and rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

(a) Capacity, utilization and type of state and local prison and jail facilities;

(b) Implementation of community corrections programs;

(c) Alternatives to the use of prison and jail facilities;

(d) Appropriate use of existing facilities and programs;

(e) Whether additional or different facilities and programs are necessary;

(f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices and sanctions in reducing future criminal conduct by juvenile and adult offenders;

(g) Methods of reducing the risk of future criminal conduct; and

(h) The effective utilization of local public safety coordinating councils.

(3) Other duties of the commission are:

(a) To conduct joint studies by agreement with other state agencies, boards or commissions on any matter within the jurisdiction of the commission.

(b) To provide Oregon criminal justice analytical and statistical information to federal agencies and serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination of information on state and local sentencing practices.

(c) To provide technical assistance and support to local public safety coordinating councils.

(d) To receive grant applications to start or expand drug court programs as defined in ORS 3.450, to make rules to govern the grant process and to award grant funds according to the rules.

(e) To prepare the racial and ethnic impact statements described in sections 1 and 3 of this 2013 Act.

(4) The commission shall establish by rule the information that must be submitted under ORS 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection must be approved by the Chief Justice of the Supreme Court before it takes effect.

(5) The commission may:

(a) Apply for and receive gifts and grants from any public or private source.

(b) Award grants from funds appropriated by the Legislative Assembly to the commission or from funds otherwise available from any other source, for the purpose of carrying out the duties of the commission.

(c) Adopt rules to carry out the provisions of this subsection.

SECTION 8. ORS 251.185, as amended by section 6 of this 2013 Act, is amended to read:

251.185. (1) The Secretary of State shall have printed in the voters' pamphlet for a general election or any special election a copy of the title and text of each state measure to be submitted to the people at the election for which the pamphlet was prepared. The pamphlet must include the procedures for filing a complaint under ORS 260.345. Each measure shall be printed in the pamphlet with:

(a) The number and ballot title of the measure;

(b) The financial estimates and any statement prepared for the measure under ORS 250.125;

(c) The explanatory statement prepared for the measure;

(d) Arguments relating to the measure and filed with the Secretary of State; and

[(e) Any racial and ethnic impact statement prepared for the measure under section 3 of this 2013 Act; and]

[(f)] (e) Any statement submitted for the measure by a citizen panel under ORS 250.141.

(2) A county measure or measure of a metropolitan service district organized under ORS chapter 268, and ballot title, explanatory statement and arguments relating to the measure, filed by the county or metropolitan service district under ORS 251.285 shall be included in the voters' pamphlet described in subsection (1) of this section if required under ORS 251.067.

SECTION 9. ORS 137.656, as amended by section 7 of this 2013 Act, is amended to read:

137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effectiveness and efficiency of state and local criminal justice systems by providing a centralized and impartial forum for statewide policy development and planning.

(2) The primary duty of the commission is to develop and maintain a state criminal justice policy and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses public safety, offender accountability, crime reduction and prevention and offender treatment and rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

(a) Capacity, utilization and type of state and local prison and jail facilities;

(b) Implementation of community corrections programs;

(c) Alternatives to the use of prison and jail facilities;

(d) Appropriate use of existing facilities and programs;

(e) Whether additional or different facilities and programs are necessary;

(f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices and sanctions in reducing future criminal conduct by juvenile and adult offenders;

(g) Methods of reducing the risk of future criminal conduct; and

(h) The effective utilization of local public safety coordinating councils.

(3) Other duties of the commission are:

(a) To conduct joint studies by agreement with other state agencies, boards or commissions on any matter within the jurisdiction of the commission.

(b) To provide Oregon criminal justice analytical and statistical information to federal agencies and serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination of information on state and local sentencing practices.

(c) To provide technical assistance and support to local public safety coordinating councils.

(d) To receive grant applications to start or expand drug court programs as defined in ORS 3.450, to make rules to govern the grant process and to award grant funds according to the rules.

[(e) To prepare the racial and ethnic impact statements described in sections 1 and 3 of this 2013 Act.]

(4) The commission shall establish by rule the information that must be submitted under ORS 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection must be approved by the Chief Justice of the Supreme Court before it takes effect.

(5) The commission may:

(a) Apply for and receive gifts and grants from any public or private source.

(b) Award grants from funds appropriated by the Legislative Assembly to the commission or from funds otherwise available from any other source, for the purpose of carrying out the duties of the commission.

(c) Adopt rules to carry out the provisions of this subsection.

SECTION 10. The amendments to ORS 137.656 and 251.185 by sections 8 and 9 of this 2013 Act become operative on January 2, 2018.

SECTION 11. Section 3 of this 2013 Act and the amendments to ORS 251.185 by section 6 of this 2013 Act apply to elections held after the first Tuesday after the first Monday in November 2014.

Approved by the Governor July 1, 2013
Filed in the office of Secretary of State July 1, 2013
Effective date January 1, 2014

A-Engrossed
House Bill 2352

Ordered by the House May 19
Including House Amendments dated May 19

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires preparation of racial and ethnic impact statement when legislation or state measure may affect racial composition of criminal offender population and when State Board of Parole and Post-Prison Supervision considers rules pertaining to parole or post-prison supervision. **Requires statement to describe effect legislation or rule may have on victims of crime who are members of racial and ethnic groups.**

Requires inclusion of statement in voters' pamphlet and on ballot.

A BILL FOR AN ACT

1
2 Relating to composition of criminal offender population; creating new provisions; and amending ORS
3 137.656 and 251.185.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) A racial and ethnic impact statement must be prepared for any legis-**
6 **lation that may, if enacted, affect the racial and ethnic composition of the criminal offender**
7 **population. The statement must include a description of the effect the legislation may have**
8 **on victims of crime who are members of racial and ethnic groups for which data are avail-**
9 **able.**

10 **(2) Before a legislative committee hearing on legislation that may, if enacted, affect the**
11 **racial and ethnic composition of the criminal offender population, the committee shall submit**
12 **a written request to the Oregon Criminal Justice Commission to prepare and submit to the**
13 **committee a racial and ethnic impact statement described in ORS 137.656.**

14 **(3) As used in this section, "criminal offender population" means all persons who are**
15 **convicted of a crime or adjudicated for an act that, if committed by a person 18 years of age**
16 **or older, would constitute a crime.**

17 **SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS chapter 250.**

18 **SECTION 3. (1) If a state measure may affect the racial and ethnic composition of the**
19 **criminal offender population, the Oregon Criminal Justice Commission shall prepare a racial**
20 **and ethnic impact statement described in ORS 137.656. The statement shall be printed in the**
21 **voters' pamphlet and on the ballot. The statement shall be impartial, simple and under-**
22 **standable.**

23 **(2) If the Oregon Criminal Justice Commission has prepared a racial and ethnic impact**
24 **statement for a state measure, not later than the 99th day before a special election held on**
25 **the date of a primary election or any general election at which the state measure is to be**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 submitted to the people, the commission shall file the statement with the Secretary of State.
2 The commission may begin preparation of the statement on the date that the petition is ac-
3 cepted for verification of signatures under ORS 250.105 or the date that a measure referred
4 by the Legislative Assembly is filed with the Secretary of State, whichever is applicable.

5 (3) Not later than the 95th day before the election, the Secretary of State shall hold a
6 hearing in Salem upon reasonable statewide notice to receive suggested changes to the
7 statement or to receive other information. At the hearing any person may submit suggested
8 changes or other information orally or in writing. Written suggestions and any other in-
9 formation also may be submitted at any time before the hearing.

10 (4) The Oregon Criminal Justice Commission shall consider suggestions and any other
11 information submitted under subsection (3) of this section, and may file a revised statement
12 with the Secretary of State not later than the 90th day before the election. The Secretary
13 of State shall certify a final statement not later than the 90th day before the election at
14 which the measure is to be voted upon. All statements prepared under this section shall be
15 made available to the public.

16 (5) A failure to prepare, file or certify a statement does not prevent inclusion of the
17 measure in the voters' pamphlet or placement of the measure on the ballot.

18 (6) If the statement is not delivered to the county clerk by the 61st day before the
19 election, the county clerk may proceed with the printing of ballots. The county clerk is not
20 required to reprint ballots to include the statement or to provide supplemental information
21 that includes the statement.

22 (7)(a) Any person alleging that the statement was prepared, filed or certified in violation
23 of the procedures described in this section may petition the Supreme Court seeking that the
24 required procedures be followed and stating the reasons the statement does not satisfy the
25 required procedures. A petition is not allowed concerning the contents of the statement or
26 whether a statement should be prepared.

27 (b) If the petition is filed not later than the 85th day before the election at which the
28 measure is to be voted upon, the court shall review the procedures under which the state-
29 ment was prepared, filed and certified, hear arguments and determine whether the proce-
30 dures described in this section were satisfied. The review by the Supreme Court shall be
31 conducted expeditiously to ensure the orderly and timely conduct of the election at which the
32 measure is to be submitted to the electors.

33 (c) If the court determines that the procedures described in this section were not satis-
34 fied, the court shall order that a second statement be prepared, filed and certified as pro-
35 vided in this section except:

36 (A) The Oregon Criminal Justice Commission shall prepare and file with the Secretary
37 of State a statement not later than two days following the decision of the court;

38 (B) A hearing shall be held within two days after the statement is filed; and

39 (C) A statement shall be certified not later than seven days after the decision of the
40 court. The procedures under which the second statement is filed and certified may not be
41 appealed.

42 (8) As used in this section, "criminal offender population" means all persons who are
43 convicted of a crime or adjudicated for an act that, if committed by a person 18 years of age
44 or older, would constitute a crime.

45 **SECTION 4.** In establishing rules applicable to parole or post-prison supervision, the

1 **State Board of Parole and Post-Prison Supervision shall, consistent with the process de-**
2 **scribed in ORS 137.656 (5), prepare and consider a racial and ethnic impact statement de-**
3 **scribing the effect of the rules on:**

4 **(1) The racial and ethnic composition of persons on parole or post-prison supervision; and**

5 **(2) Victims of crime who are members of racial and ethnic groups for which data are**
6 **available.**

7 **SECTION 5.** ORS 137.656 is amended to read:

8 137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effec-
9 tiveness and efficiency of state and local criminal justice systems by providing a centralized and
10 impartial forum for statewide policy development and planning.

11 (2) The primary duty of the commission is to develop and maintain a state criminal justice policy
12 and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses
13 public safety, offender accountability, crime reduction and prevention and offender treatment and
14 rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

15 (a) Capacity, utilization and type of state and local prison and jail facilities;

16 (b) Implementation of community corrections programs;

17 (c) Alternatives to the use of prison and jail facilities;

18 (d) Appropriate use of existing facilities and programs;

19 (e) Whether additional or different facilities and programs are necessary;

20 (f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices
21 and sanctions in reducing future criminal conduct by juvenile and adult offenders;

22 (g) Methods of reducing the risk of future criminal conduct; and

23 (h) The effective utilization of local public safety coordinating councils.

24 (3) Other duties of the commission are:

25 (a) To conduct joint studies by agreement with other state agencies, boards or commissions on
26 any matter within the jurisdiction of the commission.

27 (b) To provide Oregon criminal justice analytical and statistical information to federal agencies
28 and serve as a clearinghouse and information center for the collection, preparation, analysis and
29 dissemination of information on state and local sentencing practices.

30 (c) To provide technical assistance and support to local public safety coordinating councils.

31 (d) To receive grant applications to start or expand drug court programs as defined in ORS
32 3.450, to make rules to govern the grant process and to award grant funds according to the rules.

33 (4) The commission shall establish by rule the information that must be submitted under ORS
34 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection
35 must be approved by the Chief Justice of the Supreme Court before it takes effect.

36 **(5)(a) The commission shall develop a standardized protocol for the preparation of racial**
37 **and ethnic impact statements.**

38 **(b) A racial and ethnic impact statement shall include the following:**

39 **(A) An estimate of how proposed legislation would change the racial or ethnic profile of**
40 **the state's criminal offender population for racial and ethnic groups for which data are**
41 **available.**

42 **(B) An estimate of the effect the proposed legislation will have in preventing crime**
43 **against members of racial and ethnic groups for which data are available.**

44 **(C) A statement of the methodologies and assumptions used in preparing the estimates.**

45 **(c) The commission shall prepare and submit a racial and ethnic impact statement:**

1 **(A) To a legislative committee, prior to the hearing on the legislation, upon receipt of a**
2 **committee's request for a statement; and**

3 **(B) In accordance with section 3 of this 2009 Act.**

4 **(d) As used in this subsection, "criminal offender population" means all persons who are**
5 **convicted of a crime or adjudicated for an act that, if committed by a person 18 years of age**
6 **or older, would constitute a crime.**

7 **SECTION 6.** ORS 251.185 is amended to read:

8 251.185. (1) The Secretary of State shall have printed in the voters' pamphlet for a general
9 election or any special election a copy of the title and text of each state measure to be submitted
10 to the people at the election for which the pamphlet was prepared. Each measure shall be printed
11 in the pamphlet with:

12 (a) The number and ballot title of the measure;

13 (b) The financial estimates and any statement prepared for the measure under ORS 250.125;

14 **(c) The racial and ethnic impact statement described in ORS 137.656, if one is prepared;**

15 [(c)] **(d)** The explanatory statement prepared for the measure; and

16 [(d)] **(e)** Arguments relating to the measure and filed with the Secretary of State.

17 (2) A county measure or measure of a metropolitan service district organized under ORS chapter
18 268, and ballot title, explanatory statement and arguments relating to the measure, filed by the
19 county or metropolitan service district under ORS 251.285 shall be included in the voters' pamphlet
20 described in subsection (1) of this section if required under ORS 251.067.

21 **SECTION 7.** (1) **Section 1 of this 2009 Act applies to legislative hearings conducted on or**
22 **after the effective date of this 2009 Act.**

23 **(2) Section 3 of this 2009 Act and the amendments to ORS 251.185 by section 6 of this 2009**
24 **Act apply to elections held after the first Tuesday after the first Monday in November 2010.**

25 **(3) Section 4 of this 2009 Act applies to rules adopted on or after the effective date of this**
26 **2009 Act.**

27

Senate Bill 463

Sponsored by Senator SHIELDS; Senator WINTERS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Oregon Criminal Justice Commission to create, upon request of member of Legislative Assembly, racial and ethnic impact statement for proposed legislation or state measure. Requires that statement pertaining to state measure be printed in voters' pamphlet.

Requires state agencies awarding grants to include racial and ethnic impact statement in grant application.

A BILL FOR AN ACT

1
2 Relating to racial and ethnic impact statements; creating new provisions; and amending ORS 137.656
3 and 251.185.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) As used in this section:**

6 (a) **"Criminal offender population" means all persons who are convicted of a crime or**
7 **adjudicated for an act that, if committed by an adult, would constitute a crime.**

8 (b) **"Recipients of human services" means all persons who are found to be within the ju-**
9 **risdiction of the juvenile court under ORS 419B.100 or who receive child welfare services**
10 **described in ORS 418.005.**

11 (2) **At the request of a member of the Legislative Assembly, the Oregon Criminal Justice**
12 **Commission shall prepare a racial and ethnic impact statement that describes the effects of**
13 **proposed legislation on the racial and ethnic composition of:**

14 (a) **The criminal offender population; or**

15 (b) **Recipients of human services.**

16 (3) **A racial and ethnic impact statement must be impartial, simple and understandable**
17 **and must include, for racial and ethnic groups for which data are available, the following:**

18 (a) **An estimate of how the proposed legislation would change the racial and ethnic**
19 **composition of the criminal offender population or recipients of human services;**

20 (b) **A statement of the methodologies and assumptions used in preparing the estimate;**
21 **and**

22 (c) **If the racial and ethnic impact statement addresses the effect of proposed legislation**
23 **on the criminal offender population, an estimate of the racial and ethnic composition of the**
24 **crime victims who may be affected by the proposed legislation.**

25 (4) **The commission shall adopt rules to carry out the provisions of this section.**

26 **SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS chapter 250.**

27 **SECTION 3. (1) At the request of a member of the Legislative Assembly, the Oregon**
28 **Criminal Justice Commission shall prepare a racial and ethnic impact statement that de-**
29 **scribes the effects of a state measure on the racial and ethnic composition of:**

30 (a) **The criminal offender population, as defined in section 1 of this 2013 Act; or**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (b) Recipients of human services, as defined in section 1 of this 2013 Act.

2 (2) The statement must be impartial, simple and understandable and must include the
3 information described in section 1 (3) of this 2013 Act.

4 (3) If the commission has prepared a racial and ethnic impact statement for a state
5 measure, not later than the 99th day before a special election held on the date of a primary
6 election or any general election at which the state measure is to be submitted to the people,
7 the commission shall file the statement with the Secretary of State.

8 (4) Not later than the 95th day before the election, the Secretary of State shall hold a
9 hearing in Salem upon reasonable statewide notice to receive suggestions for changes to the
10 statement or to receive other information. At the hearing, any person may submit suggested
11 changes or other information orally or in writing. Written suggestions and any other infor-
12 mation also may be submitted at any time before the hearing.

13 (5) The commission shall consider suggestions and any other information submitted un-
14 der subsection (4) of this section and may file a revised statement with the Secretary of
15 State not later than the 90th day before the election at which the measure is to be voted
16 upon.

17 (6) The Secretary of State shall certify the statement not later than the 90th day before
18 the election at which the measure is to be voted upon.

19 (7) All statements prepared under this section shall be made available to the public.

20 (8) A failure to prepare, file or certify a statement does not prevent inclusion of the
21 measure in the voters' pamphlet.

22 **SECTION 4.** (1) A state agency that awards grants shall require that each grant appli-
23 cation include a racial and ethnic impact statement that must contain the following infor-
24 mation:

25 (a) Any disproportionate or unique impact of proposed policies or programs on minority
26 persons in this state;

27 (b) A rationale for the existence of policies or programs having a disproportionate or
28 unique impact on minority persons in this state; and

29 (c) Evidence of consultation with representatives of minority persons in cases in which
30 a proposed policy or program has a disproportionate or unique impact on minority persons
31 in this state.

32 (2) The Oregon Department of Administrative Services shall create and distribute a racial
33 and ethnic impact statement form for state agencies and shall ensure that the statement is
34 included in applications for grants awarded by state agencies.

35 (3) The racial and ethnic impact statement shall be used for informational purposes.

36 (4) As used in this section:

37 (a) "Minority persons" includes individuals who are women, persons with disabilities,
38 African-Americans, Hispanics, Asians or Pacific Islanders, American Indians and Alaskan
39 Natives.

40 (b) "State agency" means the executive department as defined in ORS 174.112.

41 **SECTION 5.** ORS 251.185 is amended to read:

42 251.185. (1) The Secretary of State shall have printed in the voters' pamphlet for a general
43 election or any special election a copy of the title and text of each state measure to be submitted
44 to the people at the election for which the pamphlet was prepared. The pamphlet must include the
45 procedures for filing a complaint under ORS 260.345. Each measure shall be printed in the pamphlet

1 with:

- 2 (a) The number and ballot title of the measure;
- 3 (b) The financial estimates and any statement prepared for the measure under ORS 250.125;
- 4 (c) The explanatory statement prepared for the measure;
- 5 (d) Arguments relating to the measure and filed with the Secretary of State;
- 6 (e) **Any racial and ethnic impact statement prepared for the measure under section 3 of**

7 **this 2013 Act;** and

8 [(e)] (f) Any statement submitted for the measure by a citizen panel under ORS 250.141.

9 (2) A county measure or measure of a metropolitan service district organized under ORS chapter
10 268, and ballot title, explanatory statement and arguments relating to the measure, filed by the
11 county or metropolitan service district under ORS 251.285 shall be included in the voters' pamphlet
12 described in subsection (1) of this section if required under ORS 251.067.

13 **SECTION 6.** ORS 137.656 is amended to read:

14 137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effec-
15 tiveness and efficiency of state and local criminal justice systems by providing a centralized and
16 impartial forum for statewide policy development and planning.

17 (2) The primary duty of the commission is to develop and maintain a state criminal justice policy
18 and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses
19 public safety, offender accountability, crime reduction and prevention and offender treatment and
20 rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

- 21 (a) Capacity, utilization and type of state and local prison and jail facilities;
- 22 (b) Implementation of community corrections programs;
- 23 (c) Alternatives to the use of prison and jail facilities;
- 24 (d) Appropriate use of existing facilities and programs;
- 25 (e) Whether additional or different facilities and programs are necessary;
- 26 (f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices
27 and sanctions in reducing future criminal conduct by juvenile and adult offenders;
- 28 (g) Methods of reducing the risk of future criminal conduct; and
- 29 (h) The effective utilization of local public safety coordinating councils.

30 (3) Other duties of the commission are:

31 (a) To conduct joint studies by agreement with other state agencies, boards or commissions on
32 any matter within the jurisdiction of the commission.

33 (b) To provide Oregon criminal justice analytical and statistical information to federal agencies
34 and serve as a clearinghouse and information center for the collection, preparation, analysis and
35 dissemination of information on state and local sentencing practices.

36 (c) To provide technical assistance and support to local public safety coordinating councils.

37 (d) To receive grant applications to start or expand drug court programs as defined in ORS
38 3.450, to make rules to govern the grant process and to award grant funds according to the rules.

39 (e) **To prepare the racial and ethnic impact statements described in sections 1 and 3 of**
40 **this 2013 Act.**

41 (4) The commission shall establish by rule the information that must be submitted under ORS
42 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection
43 must be approved by the Chief Justice of the Supreme Court before it takes effect.

44 (5) The commission may:

- 45 (a) Apply for and receive gifts and grants from any public or private source.

1 (b) Award grants from funds appropriated by the Legislative Assembly to the commission or
2 from funds otherwise available from any other source, for the purpose of carrying out the duties of
3 the commission.

4 (c) Adopt rules to carry out the provisions of this subsection.

5 **SECTION 7. Section 3 of this 2013 Act and the amendments to ORS 251.185 by section 5**
6 **of this 2013 Act apply to elections held after the first Tuesday after the first Monday in No-**
7 **vember 2014.**

8

By: Dutton

H.B. No. 930

A BILL TO BE ENTITLED

AN ACT

relating to a criminal justice policy impact statement attached to certain bills or resolutions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 314, Government Code, is amended by adding Section 314.005 to read as follows:

Sec. 314.005. CRIMINAL JUSTICE POLICY IMPACT STATEMENT.

(a) The board shall prepare a criminal justice policy impact statement for each bill or resolution that authorizes or requires a change in the sanctions applicable to adults convicted of a felony.

(b) The impact statement must include information concerning:

(1) the estimated number of criminal cases each year that the legislation will impact;

(2) the fiscal impact of imprisoning or imposing other sanctions on persons in accordance with the legislation;

(3) the impact of the legislation on major racial and ethnic minority groups;

(4) the impact of the legislation on existing correctional facilities, as defined by Section 1.07, Penal Code;

(5) the likelihood that the legislation may create a need for additional prison capacity; and

(6) any other matter the board determines relevant.

(c) The board shall consult with the Department of Public

1 Safety and the Texas Department of Criminal Justice to develop a
2 protocol for analyzing the impact of the bill or resolution on
3 racial and ethnic minority groups.

4 (d) The impact statement must be attached to the bill or
5 resolution immediately following the fiscal note attached under
6 Section 314.003.

7 SECTION 2. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2009.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 22, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

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

IN RE: HB930 by Dutton (Relating to a criminal justice policy impact statement attached to certain bills or resolutions.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would require the Legislative Budget Board to prepare a criminal justice policy impact statement for each bill or resolution that authorizes or requires a change in the sanctions applicable to adults convicted of a felony and establishes the type of information that must be included. The Legislative Budget Board currently prepares criminal justice impact statements on all bills authorizing or requiring a change in the sanctions applicable to adults convicted of felony crimes, but does not currently provide all of the information specified in the bill.

The bill would be effective immediately with a two-thirds vote of each house or if the necessary votes are not received, on September 1, 2009.

The Department of Public Safety responded that the provisions of the bill could impact the crime records services. It is anticipated that any additional costs could be absorbed within existing resources of the Department of Public Safety and the Legislative Budget Board.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety, 696 Department of Criminal Justice

LBB Staff: JOB, ESi, MS

AN ACT

relating to the prevention, investigation, prosecution, and punishment for certain gang-related and other criminal offenses, including engaging in organized criminal activity, and to the consequences and costs of engaging in certain activities of a criminal street gang or certain other criminal activity; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

1 (4) unlawful manufacture, transportation, repair, or
2 sale of firearms or prohibited weapons;

3 (5) unlawful manufacture, delivery, dispensation, or
4 distribution of a controlled substance or dangerous drug, or
5 unlawful possession of a controlled substance or dangerous drug
6 through forgery, fraud, misrepresentation, or deception;

7 (6) any unlawful wholesale promotion or possession of
8 any obscene material or obscene device with the intent to wholesale
9 promote the same;

10 (7) any offense under Subchapter B, Chapter 43,
11 depicting or involving conduct by or directed toward a child
12 younger than 18 years of age;

13 (8) any felony offense under Chapter 32;

14 (9) any offense under Chapter 36;

15 (10) any offense under Chapter 34 or 35;

16 (11) any offense under Section 37.11(a);

17 (12) any offense under Chapter 20A; [or —]

18 (13) any offense under Section 37.10 ; or

19 (14) any offense under Section 38.06, 38.07, 38.09, or

20 38.11.

21 SECTION 2. Section 15.031(e), Penal Code, is amended to
22 read as follows:

23 (e) An offense under this section is one category lower than
24 the solicited offense , except that an offense under this section is
25 the same category as the solicited offense if it is shown on the
26 trial of the offense that the actor:

27 (1) was at the time of the offense 17 years of age or

1 older and a member of a criminal street gang, as defined by Section
2 71.01; and

3 (2) committed the offense with the intent to:

4 (A) further the criminal activities of the
5 criminal street gang; or

6 (B) avoid detection as a member of a criminal
7 street gang.

8 SECTION 3. Chapter 71, Penal Code, is amended by adding
9 Sections 71.023, 71.028, and 71.029 to read as follows:

10 Sec. 71.023. DIRECTING ACTIVITIES OF CERTAIN CRIMINAL

11 STREET GANGS. (a) A person commits an offense if the person

12 knowingly initiates, organizes, plans, finances, directs, manages,

13 or supervises a criminal street gang or members of a criminal street

14 gang with the intent to benefit, promote, or further the interests

15 of the criminal street gang or to increase the person 's standing,

16 position, or status in the criminal street gang.

17 (b) An offense under this section is a felony of the first

18 degree.

19 (c) Notwithstanding Section 71.01, in this section,

20 "criminal street gang" means:

21 (1) an organization that:

22 (A) has more than 10 members whose names are

23 included in an intelligence database under Chapter 61, Code of

24 Criminal Procedure;

25 (B) has a hierarchical structure that has been

26 documented in an intelligence database under Chapter 61, Code of

27 Criminal Procedure;

1 (C) engages in profit-sharing among two or more
2 members of the organization; and

3 (D) in one or more regions of this state served by
4 different regional councils of government, continuously or
5 regularly engages in conduct:

6 (i) that constitutes an offense listed in
7 Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;

8 (ii) in which it is alleged that a deadly
9 weapon is used or exhibited during the commission of or immediate
10 flight from the commission of any felony offense; or

11 (iii) that is punishable as a felony of the
12 first or second degree under Chapter 481, Health and Safety Code; or

13 (2) an organization that, in collaboration with an
14 organization described by Subdivision (1), engages in conduct or
15 commits an offense or conspires to engage in conduct or commit an
16 offense described by Subdivision (1)(D).

17 Sec. 71.028. GANG-FREE ZONES. (a) In this section:

18 (1) "Institution of higher education," "playground,"
19 "premises," "school," "video arcade facility," and "youth center"
20 have the meanings assigned by Section 481.134, Health and Safety
21 Code.

22 (2) "Shopping mall" means an enclosed public walkway
23 or hall area that connects retail, service, or professional
24 establishments.

25 (b) This section applies to an offense listed in Section
26 71.02(a)(1), (4), or (7), other than burglary, theft, burglary of a
27 motor vehicle, or unauthorized use of a motor vehicle.

1 (c) Except as provided by Subsection (d), the punishment
2 prescribed for an offense described by Subsection (b) is increased
3 to the punishment prescribed for the next highest category of
4 offense if the actor is 17 years of age or older and it is shown
5 beyond a reasonable doubt on the trial of the offense that the actor
6 committed the offense at a location that was:

7 (1) in, on, or within 1,000 feet of any:

8 (A) real property that is owned, rented, or
9 leased by a school or school board;

10 (B) premises owned, rented, or leased by an
11 institution of higher education;

12 (C) premises of a public or private youth center;

13 or

14 (D) playground;

15 (2) in, on, or within 300 feet of any:

16 (A) shopping mall;

17 (B) movie theater;

18 (C) premises of a public swimming pool; or

19 (D) premises of a video arcade facility; or

20 (3) on a school bus.

21 (d) The punishment for an offense described by Subsection
22 (b) may not be increased under this section if the offense is
23 punishable under Section 71.02 as a felony of the first degree.

24 Sec. 71.029. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a
25 prosecution of an offense for which punishment is increased under
26 Section 71.028, a map produced or reproduced by a municipal or
27 county engineer for the purpose of showing the location and

1 boundaries of gang-free zones is admissible in evidence and is
2 prima facie evidence of the location or boundaries of those zones if
3 the governing body of the municipality or county adopts a
4 resolution or ordinance approving the map as an official finding
5 and record of the location or boundaries of those zones.

6 (b) A municipal or county engineer may, on request of the
7 governing body of the municipality or county, revise a map that has
8 been approved by the governing body of the municipality or county as
9 provided by Subsection (a).

10 (c) A municipal or county engineer shall file the original
11 or a copy of every approved or revised map approved as provided by
12 Subsection (a) with the county clerk of each county in which the
13 zone is located.

14 (d) This section does not prevent the prosecution from:

15 (1) introducing or relying on any other evidence or
16 testimony to establish any element of an offense for which
17 punishment is increased under Section 71.028; or

18 (2) using or introducing any other map or diagram
19 otherwise admissible under the Texas Rules of Evidence.

20 SECTION 4. Subchapter D, Chapter 37, Education Code, is
21 amended by adding Section 37.110 to read as follows:

22 Sec. 37.110. INFORMATION REGARDING GANG-FREE ZONES. The
23 superintendent of each public school district and the administrator
24 of each private elementary or secondary school located in the
25 public school district shall ensure that the student handbook for
26 each campus in the public school district includes information on
27 gang-free zones and the consequences of engaging in organized

1 criminal activity within those zones.

2 SECTION 5. Subchapter Z, Chapter 51, Education Code, is
3 amended by adding Section 51.973 to read as follows:

4 Sec. 51.973. INFORMATION REGARDING GANG-FREE ZONES. The
5 governing board of each institution of higher education shall
6 ensure that any student handbook or similar publication for the
7 institution includes information on gang-free zones and the
8 consequences of engaging in organized criminal activity within
9 those zones.

10 SECTION 6. Subchapter C, Chapter 42, Human Resources Code,
11 is amended by adding Section 42.064 to read as follows:

12 Sec. 42.064. INFORMATION REGARDING GANG-FREE ZONES. Each
13 day-care center shall, in accordance with rules adopted by the
14 executive commissioner, distribute to parents and guardians of
15 children who attend the center information on gang-free zones and
16 the consequences of engaging in organized criminal activity within
17 those zones.

18 SECTION 7. Section 37.110, Education Code, as added by this
19 Act, applies beginning with the public school district 's 2009-2010
20 school year.

21 SECTION 8. Section 51.973, Education Code, as added by this
22 Act, applies beginning with the 2009 fall semester.

23 SECTION 9. Section 15.031(e) and Section 71.02(a), Penal
24 Code, as amended by this Act, and Section 71.028, Penal Code, as
25 added by this Act, apply only to an offense committed on or after
26 the effective date of this Act. An offense committed before the
27 effective date of this Act is covered by the law in effect when the

1 offense was committed, and the former law is continued in effect for
2 that purpose. For purposes of this section, an offense was
3 committed before the effective date of this Act if any element of
4 the offense occurred before that date.

5 SECTION 10. Subchapter D, Chapter 125, Civil Practice and
6 Remedies Code, is amended by adding Section 125.070 to read as
7 follows:

8 Sec. 125.070. CIVIL ACTION FOR VIOLATION OF INJUNCTION.

9 (a) In this section, "governmental entity" means a political
10 subdivision of this state, including any city, county, school
11 district, junior college district, levee improvement district,
12 drainage district, irrigation district, water improvement
13 district, water control and improvement district, water control and
14 preservation district, freshwater supply district, navigation
15 district, conservation and reclamation district, soil conservation
16 district, communication district, public health district, and
17 river authority.

18 (b) A criminal street gang or a member of a criminal street
19 gang is liable to the state or a governmental entity injured by the
20 violation of a temporary or permanent injunctive order under this
21 subchapter.

22 (c) In an action brought against a member of a criminal
23 street gang, the plaintiff must show that the member violated the
24 temporary or permanent injunctive order.

25 (d) A district, county, or city attorney or the attorney
26 general may sue for money damages on behalf of the state or a
27 governmental entity. If the state or a governmental entity

1 prevails in a suit under this section, the state or governmental
2 entity may recover:

3 (1) actual damages;

4 (2) a civil penalty in an amount not to exceed \$20,000

5 for each violation; and

6 (3) court costs and attorney 's fees.

7 (e) The property of the criminal street gang or a member of

8 the criminal street gang may be seized in execution on a judgment

9 under this section. Property may not be seized under this

10 subsection if the owner or interest holder of the property proves by

11 a preponderance of the evidence that the owner or interest holder

12 was not a member of the criminal street gang and did not violate the

13 temporary or permanent injunctive order. The owner or interest

14 holder of property that is in the possession of a criminal street

15 gang or a member of the criminal street gang and that is subject to

16 execution under this subsection must show that the property:

17 (1) was stolen from the owner or interest holder; or

18 (2) was used or intended to be used without the

19 effective consent of the owner or interest holder by the criminal

20 street gang or a member of the criminal street gang.

21 (f) The attorney general shall deposit money received under

22 this section for damages or as a civil penalty in the neighborhood

23 and community recovery fund held by the attorney general outside

24 the state treasury. Money in the fund is held by the attorney

25 general in trust for the benefit of the community or neighborhood

26 harmed by the violation of a temporary or permanent injunctive

27 order. Money in the fund may be used only for the benefit of the

1 community or neighborhood harmed by the violation of the injunctive
2 order. Interest earned on money in the fund shall be credited to
3 the fund. The attorney general shall account for money in the fund
4 so that money held for the benefit of a community or neighborhood,
5 and interest earned on that money, are not commingled with money in
6 the fund held for the benefit of a different community or
7 neighborhood.

8 (g) A district, county, or city attorney who brings suit on
9 behalf of a governmental entity shall deposit money received for
10 damages or as a civil penalty in an account to be held in trust for
11 the benefit of the community or neighborhood harmed by the
12 violation of a temporary or permanent injunctive order. Money in
13 the account may be used only for the benefit of the community or
14 neighborhood harmed by the violation of the injunctive order.
15 Interest earned on money in the account shall be credited to the
16 account. The district, county, or city attorney shall account for
17 money in the account so that money held for the benefit of a
18 community or neighborhood, and interest earned on that money, are
19 not commingled with money in the account held for the benefit of a
20 different community or neighborhood.

21 (h) An action under this section brought by the state or a
22 governmental entity does not waive sovereign or governmental
23 immunity for any purpose.

24 SECTION 11. Article 59.01(2), Code of Criminal Procedure,
25 as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B.
26 2278), Acts of the 80th Legislature, Regular Session, 2007, is
27 reenacted and amended to read as follows:

1 (2) "Contraband" means property of any nature,
2 including real, personal, tangible, or intangible, that is:

3 (A) used in the commission of:

4 (i) any first or second degree felony under
5 the Penal Code;

6 (ii) any felony under Section 15.031(b),
7 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
8 31, 32, 33, 33A, or 35, Penal Code;

9 (iii) any felony under The Securities Act
10 (Article 581-1 et seq., Vernon 's Texas Civil Statutes); or

11 (iv) any offense under Chapter 49, Penal
12 Code, that is punishable as a felony of the third degree or state
13 jail felony, if the defendant has been previously convicted three
14 times of an offense under that chapter;

15 (B) used or intended to be used in the commission
16 of:

17 (i) any felony under Chapter 481, Health
18 and Safety Code (Texas Controlled Substances Act);

19 (ii) any felony under Chapter 483, Health
20 and Safety Code;

21 (iii) a felony under Chapter 153, Finance
22 Code;

23 (iv) any felony under Chapter 34, Penal
24 Code;

25 (v) a Class A misdemeanor under Subchapter
26 B, Chapter 365, Health and Safety Code, if the defendant has been
27 previously convicted twice of an offense under that subchapter;

1 (vi) any felony under Chapter 152, Finance
2 Code;

3 (vii) any felony under Chapter 32, Human
4 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
5 involves the state Medicaid program;

6 (viii) a Class B misdemeanor under Chapter
7 522, Business & Commerce Code; [or —]

8 (ix) a Class A misdemeanor under Section
9 35.153, Business & Commerce Code; or

10 (x) any offense under Chapter 71, Penal
11 Code;

12 (C) the proceeds gained from the commission of a
13 felony listed in Paragraph (A) or (B) of this subdivision, a
14 misdemeanor listed in Paragraph (B)(viii) or (x) of this
15 subdivision, or a crime of violence;

16 (D) acquired with proceeds gained from the
17 commission of a felony listed in Paragraph (A) or (B) of this
18 subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of
19 this subdivision, or a crime of violence; or

20 (E) used to facilitate or intended to be used to
21 facilitate the commission of a felony under Section 15.031 or
22 43.25, Penal Code.

23 SECTION 12. Chapter 59, Code of Criminal Procedure, is
24 amended by adding Article 59.011 to read as follows:

25 Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If
26 property described by Article 59.01(2)(B)(x) is subject to
27 forfeiture under this chapter and Article 18.18, the attorney

1 representing the state may proceed under either this chapter or
2 that article.

3 SECTION 13. Section 125.070, Civil Practice and Remedies
4 Code, as added by this Act, applies only to a cause of action that
5 accrues on or after the effective date of this Act. A cause of
6 action that accrued before the effective date of this Act is
7 governed by the law in effect immediately before the effective date
8 of this Act, and that law is continued in effect for that purpose.

9 SECTION 14. Article 59.01(2), Code of Criminal Procedure,
10 as amended by this Act, and Article 59.011, Code of Criminal
11 Procedure, as added by this Act, apply only to the forfeiture of
12 property used in the commission of an offense committed on or after
13 the effective date of this Act. Forfeiture of property used in the
14 commission of an offense committed before the effective date of
15 this Act is governed by the law in effect when the offense was
16 committed, and the former law is continued in effect for that
17 purpose. For purposes of this section, an offense was committed
18 before the effective date of this Act if any element of the offense
19 occurred before that date.

20 SECTION 15. Article 42.01, Code of Criminal Procedure, is
21 amended by adding Section 9 to read as follows:

22 Sec. 9. In addition to the information described by Section
23 1, the judgment should reflect affirmative findings entered
24 pursuant to Article 42.0197.

25 SECTION 16. Chapter 42, Code of Criminal Procedure, is
26 amended by adding Article 42.0197 to read as follows:

27 Art. 42.0197. FINDING REGARDING GANG-RELATED CONDUCT. In

1 the trial of an offense, on the motion of the attorney representing
2 the state the judge shall make an affirmative finding of fact and
3 enter the affirmative finding in the judgment in the case if the
4 judge determines that the applicable conduct was engaged in as part
5 of the activities of a criminal street gang as defined by Section
6 71.01, Penal Code.

7 SECTION 17. Section 11(a), Article 42.12, Code of Criminal
8 Procedure, is amended to read as follows:

9 (a) The judge of the court having jurisdiction of the case
10 shall determine the conditions of community supervision and may, at
11 any time[, -] during the period of community supervision , alter or
12 modify the conditions. The judge may impose any reasonable
13 condition that is designed to protect or restore the community,
14 protect or restore the victim, or punish, rehabilitate, or reform
15 the defendant. Conditions of community supervision may include,
16 but shall not be limited to, the conditions that the defendant
17 shall:

18 (1) Commit no offense against the laws of this State or
19 of any other State or of the United States;

20 (2) Avoid injurious or vicious habits;

21 (3) Avoid persons or places of disreputable or harmful
22 character , including any person, other than a family member of the
23 defendant, who is an active member of a criminal street gang;

24 (4) Report to the supervision officer as directed by
25 the judge or supervision officer and obey all rules and regulations
26 of the community supervision and corrections department;

27 (5) Permit the supervision officer to visit the

- 1 defendant at the defendant 's home or elsewhere;
- 2 (6) Work faithfully at suitable employment as far as
3 possible;
- 4 (7) Remain within a specified place;
- 5 (8) Pay the defendant 's fine, if one is [~~be~~] assessed,
6 and all court costs whether a fine is [~~be~~] assessed or not, in one or
7 several sums;
- 8 (9) Support the defendant 's dependents;
- 9 (10) Participate, for a time specified by the judge /
10 in any community-based program, including a community-service work
11 program under Section 16 of this article;
- 12 (11) Reimburse the county in which the prosecution was
13 instituted for compensation paid to appointed counsel for defending
14 the defendant in the case, if counsel was appointed, or if the
15 defendant was represented by a county-paid public defender, in an
16 amount that would have been paid to an appointed attorney had the
17 county not had a public defender;
- 18 (12) Remain under custodial supervision in a community
19 corrections facility, obey all rules and regulations of the [~~such~~]
20 facility, and pay a percentage of the defendant 's income to the
21 facility for room and board;
- 22 (13) Pay a percentage of the defendant 's income to the
23 defendant 's dependents for their support while under custodial
24 supervision in a community corrections facility;
- 25 (14) Submit to testing for alcohol or controlled
26 substances;
- 27 (15) Attend counseling sessions for substance abusers

1 or participate in substance abuse treatment services in a program
2 or facility approved or licensed by the Texas Commission on Alcohol
3 and Drug Abuse;

4 (16) With the consent of the victim of a misdemeanor
5 offense or of any offense under Title 7, Penal Code, participate in
6 victim-defendant mediation;

7 (17) Submit to electronic monitoring;

8 (18) Reimburse the compensation to victims of crime
9 fund for any amounts paid from that fund to or on behalf of a victim,
10 as defined by Article 56.32, of the defendant 's offense or if no
11 reimbursement is required, make one payment to the compensation to
12 victims of crime fund in an amount not to exceed \$50 if the offense
13 is a misdemeanor or not to exceed \$100 if the offense is a felony;

14 (19) Reimburse a law enforcement agency for the
15 analysis, storage, or disposal of raw materials, controlled
16 substances, chemical precursors, drug paraphernalia, or other
17 materials seized in connection with the offense;

18 (20) Pay all or part of the reasonable and necessary
19 costs incurred by the victim for psychological counseling made
20 necessary by the offense or for counseling and education relating
21 to acquired immune deficiency syndrome or human immunodeficiency
22 virus made necessary by the offense;

23 (21) Make one payment in an amount not to exceed \$50 to
24 a crime stoppers organization as defined by Section 414.001,
25 Government Code, and as certified by the Crime Stoppers Advisory
26 Council;

27 (22) Submit a DNA sample to the Department of Public

1 Safety under Subchapter G, Chapter 411, Government Code, for the
2 purpose of creating a DNA record of the defendant;

3 (23) In any manner required by the judge, provide
4 public notice of the offense for which the defendant was placed on
5 community supervision in the county in which the offense was
6 committed; and

7 (24) Reimburse the county in which the prosecution was
8 instituted for compensation paid to any interpreter in the case.

9 SECTION 18. Article 42.12, Code of Criminal Procedure, is
10 amended by adding Sections 13E and 13F to read as follows:

11 Sec. 13E. ELECTRONIC MONITORING OF CERTAIN MEMBERS OF
12 CRIMINAL STREET GANG WHO ARE PLACED ON COMMUNITY SUPERVISION. (a)

13 This section applies only to a defendant who:

14 (1) is identified as a member of a criminal street gang
15 in an intelligence database established under Chapter 61; and

16 (2) has two or more times been previously convicted
17 of, or received a grant of deferred adjudication community
18 supervision or another functionally equivalent form of community
19 supervision or probation for, a felony offense under the laws of
20 this state, another state, or the United States.

21 (b) A court granting community supervision to a defendant
22 described by Subsection (a) may, on the defendant 's conviction of a
23 felony offense, require as a condition of community supervision
24 that the defendant submit to tracking under an electronic
25 monitoring service or other appropriate technological service
26 designed to track a person 's location.

27 Sec. 13F. RESTRICTIONS ON OPERATION OF MOTOR VEHICLE FOR

1 DEFENDANTS CONVICTED OF CERTAIN ORGANIZED CRIME OFFENSES. A court
2 granting community supervision to a defendant convicted of an
3 offense under Chapter 71, Penal Code, may impose as a condition of
4 community supervision restrictions on the defendant 's operation of
5 a motor vehicle, including specifying:

6 (1) hours during which the defendant may not operate a
7 motor vehicle; and

8 (2) locations at or in which the defendant may not
9 operate a motor vehicle.

10 SECTION 19. Chapter 54, Family Code, is amended by adding
11 Section 54.0491 to read as follows:

12 Sec. 54.0491. GANG-RELATED CONDUCT. (a) In this section:

13 (1) "Criminal street gang" has the meaning assigned by
14 Section 71.01, Penal Code.

15 (2) "Gang-related conduct" means conduct that
16 violates a penal law of the grade of Class B misdemeanor or higher
17 and in which a child engages with the intent to:

18 (A) further the criminal activities of a criminal
19 street gang of which the child is a member;

20 (B) gain membership in a criminal street gang; or

21 (C) avoid detection as a member of a criminal
22 street gang.

23 (b) A juvenile court, in a disposition hearing under Section
24 54.04 regarding a child who has been adjudicated to have engaged in
25 delinquent conduct that is also gang-related conduct, shall order
26 the child to participate in a criminal street gang intervention
27 program that is appropriate for the child based on the child 's level

1 of involvement in the criminal activities of a criminal street
2 gang. The intervention program:

3 (1) must include at least 12 hours of instruction; and

4 (2) may include voluntary tattoo removal.

5 (c) If a child required to attend a criminal street gang
6 intervention program is committed to the Texas Youth Commission as
7 a result of the gang-related conduct, the child must complete the
8 intervention program before being discharged from the custody of or
9 released under supervision by the commission.

10 SECTION 20. Subchapter G, Chapter 508, Government Code, is
11 amended by adding Section 508.227 to read as follows:

12 Sec. 508.227. ELECTRONIC MONITORING OF CERTAIN MEMBERS OF
13 CRIMINAL STREET GANG. (a) This section applies only to a releasee
14 who:

15 (1) is identified as a member of a criminal street gang
16 in an intelligence database established under Chapter 61, Code of
17 Criminal Procedure; and

18 (2) has three or more times been convicted of, or
19 received a grant of deferred adjudication community supervision or
20 another functionally equivalent form of community supervision or
21 probation for, a felony offense under the laws of this state,
22 another state, or the United States.

23 (b) A parole panel may require as a condition of release on
24 parole or to mandatory supervision that a releasee described by
25 Subsection (a) submit to tracking under an electronic monitoring
26 service or other appropriate technological service designed to
27 track a person 's location.

1 SECTION 21. Section 3.03, Penal Code, is amended by
2 amending Subsection (b) and adding Subsection (b-1) to read as
3 follows:

4 (b) If the accused is found guilty of more than one offense
5 arising out of the same criminal episode, the sentences may run
6 concurrently or consecutively if each sentence is for a conviction
7 of:

8 (1) an offense:

9 (A) under Section 49.07 or 49.08, regardless of
10 whether the accused is convicted of violations of the same section
11 more than once or is convicted of violations of both sections; or

12 (B) for which a plea agreement was reached in a
13 case in which the accused was charged with more than one offense
14 listed in Paragraph (A), regardless of whether the accused is
15 charged with violations of the same section more than once or is
16 charged with violations of both sections;

17 (2) an offense:

18 (A) under Section 33.021 or an offense under
19 Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed
20 against a victim younger than 17 years of age at the time of the
21 commission of the offense regardless of whether the accused is
22 convicted of violations of the same section more than once or is
23 convicted of violations of more than one section; or

24 (B) for which a plea agreement was reached in a
25 case in which the accused was charged with more than one offense
26 listed in Paragraph (A) committed against a victim younger than 17
27 years of age at the time of the commission of the offense regardless

1 of whether the accused is charged with violations of the same
2 section more than once or is charged with violations of more than
3 one section; [or —]

4 (3) an offense:

5 (A) under Section 21.15 or 43.26, regardless of
6 whether the accused is convicted of violations of the same section
7 more than once or is convicted of violations of both sections; or

8 (B) for which a plea agreement was reached in a
9 case in which the accused was charged with more than one offense
10 listed in Paragraph (A), regardless of whether the accused is
11 charged with violations of the same section more than once or is
12 charged with violations of both sections ; or

13 (4) an offense for which the judgment in the case
14 contains an affirmative finding under Article 42.0197, Code of
15 Criminal Procedure.

16 (b-1) Subsection (b)(4) does not apply to a defendant whose
17 case was transferred to the court under Section 54.02, Family Code.

18 SECTION 22. Section 9, Article 42.01, Code of Criminal
19 Procedure, and Article 42.0197, Code of Criminal Procedure, as
20 added by this Act, apply only to a judgment of conviction entered on
21 or after the effective date of this Act.

22 SECTION 23. Section 11(a), Article 42.12, Code of Criminal
23 Procedure, as amended by this Act, and Sections 13E and 13F, Article
24 42.12, Code of Criminal Procedure, as added by this Act, apply only
25 to a person who is placed on community supervision for an offense
26 committed on or after the effective date of this Act. A person who
27 is placed on community supervision for an offense committed before

1 the effective date of this Act is governed by the law in effect on
2 the date the offense was committed, and the former law is continued
3 in effect for that purpose. For purposes of this section, an
4 offense was committed before the effective date of this Act if any
5 element of the offense occurred before that date.

6 SECTION 24. Section 54.0491, Family Code, as added by this
7 Act, applies only to conduct that violates a penal law of this state
8 and that occurs on or after the effective date of this Act. Conduct
9 that violates a penal law of this state and that occurs before the
10 effective date of this Act is covered by the law in effect at the
11 time the conduct occurred, and the former law is continued in effect
12 for that purpose. For purposes of this section, conduct occurs
13 before the effective date of this Act if each element of the
14 violation occurred before that date.

15 SECTION 25. Section 508.227, Government Code, as added by
16 this Act, applies only to a person released on parole or to
17 mandatory supervision for an offense committed on or after the
18 effective date of this Act. A person released on parole or to
19 mandatory supervision for an offense committed before the effective
20 date of this Act is governed by the law in effect on the date the
21 offense was committed, and the former law is continued in effect for
22 that purpose. For purposes of this section, an offense was
23 committed before the effective date of this Act if any element of
24 the offense occurred before that date.

25 SECTION 26. Section 3.03(b), Penal Code, as amended by this
26 Act, applies only to an offense committed on or after the effective
27 date of this Act. An offense committed before the effective date of

1 this Act is covered by the law in effect when the offense was
2 committed, and the former law is continued in effect for that
3 purpose. For purposes of this section, an offense was committed
4 before the effective date of this Act if any element of the offense
5 occurred before that date.

6 SECTION 27. Subchapter C, Chapter 101, Civil Practice and
7 Remedies Code, is amended by adding Section 101.067 to read as
8 follows:

9 Sec. 101.067. GRAFFITI REMOVAL. This chapter does not
10 apply to a claim for property damage caused by the removal of
11 graffiti under Section 250.006, Local Government Code.

12 SECTION 28. Section 485.018(a), Health and Safety Code, is
13 amended to read as follows:

14 (a) A political subdivision or an agency of this state may
15 not enact an ordinance or rule that requires a business
16 establishment to display an abusable volatile chemical , other than
17 aerosol paint, in a manner that makes the chemical accessible to
18 patrons of the business only with the assistance of personnel of the
19 business.

20 SECTION 29. Chapter 250, Local Government Code, is amended
21 by adding Section 250.006 to read as follows:

22 Sec. 250.006. GRAFFITI REMOVAL. (a) Except as provided by
23 Subsection (h), a county by order or a municipality by ordinance may
24 require the owner of property within the jurisdiction of the county
25 or municipality to remove graffiti from the owner 's property on
26 receipt of notice from the county or municipality.

27 (b) The order or ordinance must provide that a county or

1 municipality may not give notice to a property owner under
2 Subsection (a) unless:
3 (1) the county or municipality has offered to remove
4 the graffiti from the owner 's property free of charge; and
5 (2) the property owner has refused the offer.
6 (c) The order or ordinance must require a property owner to
7 remove the graffiti on or before the 15th day after the date the
8 property owner receives notice under Subsection (a). If the
9 property owner fails to remove the graffiti on or before the 15th
10 day after the date of receipt of the notice, the county or
11 municipality may remove the graffiti and charge the expenses of
12 removal to the property owner in accordance with a fee schedule
13 adopted by the county or municipality.
14 (d) The notice required by Subsection (a) must be given:
15 (1) personally to the owner in writing;
16 (2) by letter sent by certified mail, addressed to the
17 property owner at the property owner 's address as contained in the
18 records of the appraisal district in which the property is located;
19 or
20 (3) if service cannot be obtained under Subdivision
21 (1) or (2):
22 (A) by publication at least once in a newspaper
23 of general circulation in the county or municipality;
24 (B) by posting the notice on or near the front
25 door of each building on the property to which the notice relates;
26 or
27 (C) by posting the notice on a placard attached

1 to a stake driven into the ground on the property to which the
2 notice relates.

3 (e) The county or municipality may assess expenses incurred
4 under Subsection (c) against the property on which the work is
5 performed to remove the graffiti.

6 (f) To obtain a lien against the property for expenses
7 incurred under Subsection (c), the governing body of the county or
8 municipality must file a statement of expenses with the county
9 clerk. The statement of expenses must contain:

- 10 (1) the name of the property owner, if known;
11 (2) the legal description of the property; and
12 (3) the amount of expenses incurred under Subsection
13 (c).

14 (g) A lien described by Subsection (f) attaches to the
15 property on the date on which the statement of expenses is filed in
16 the real property records of the county in which the property is
17 located and is subordinate to:

- 18 (1) any previously recorded lien; and
19 (2) the rights of a purchaser or lender for value who
20 acquires an interest in the property subject to the lien before the
21 statement of expenses is filed as described by Subsection (f).

22 (h) An order or ordinance described by this section must
23 include an exception from the requirement that an owner of property
24 remove graffiti from the owner 's property if:

- 25 (1) the graffiti is located on transportation
26 infrastructure; and
27 (2) the removal of the graffiti would create a hazard

1 for the person performing the removal.

2 SECTION 30. Section 101.067, Civil Practice and Remedies
3 Code, as added by this Act, applies only to a cause of action that
4 accrues on or after the effective date of this Act. A cause of
5 action that accrued before the effective date of this Act is
6 governed by the law in effect immediately before the effective date
7 of this Act, and that law is continued in effect for that purpose.

8 SECTION 31. Section 37.10, Penal Code, is amended by adding
9 Subsection (j) to read as follows:

10 (j) It is not a defense to prosecution under Subsection
11 (a)(2) that the record, document, or thing made, presented, or used
12 displays or contains the statement "NOT A GOVERNMENT DOCUMENT" or
13 another substantially similar statement intended to alert a person
14 to the falsity of the record, document, or thing, unless the record,
15 document, or thing displays the statement diagonally printed
16 clearly and indelibly on both the front and back of the record,
17 document, or thing in solid red capital letters at least one-fourth
18 inch in height.

19 SECTION 32. Section 521.454, Transportation Code, is
20 amended by adding Subsection (d) to read as follows:

21 (d) If conduct constituting an offense under this section
22 also constitutes an offense under another law, the actor may be
23 prosecuted under this section, the other law, or both.

24 SECTION 33. Section 521.455, Transportation Code, is
25 amended by adding Subsection (c) to read as follows:

26 (c) If conduct constituting an offense under this section
27 also constitutes an offense under another law, the actor may be

1 prosecuted under this section, the other law, or both.

2 SECTION 34. Section 521.456, Transportation Code, is
3 amended by adding Subsection (e) to read as follows:

4 (e) If conduct constituting an offense under this section
5 also constitutes an offense under another law, the actor may be
6 prosecuted under this section, the other law, or both.

7 SECTION 35. Section 37.10(j), Penal Code, and Sections
8 521.454(d), 521.455(c), and 521.456(e), Transportation Code, as
9 added by this Act, apply only to an offense committed on or after
10 the effective date of this Act. An offense committed before the
11 effective date of this Act is covered by the law in effect when the
12 offense was committed, and the former law is continued in effect for
13 that purpose. For purposes of this section, an offense was
14 committed before the effective date of this Act if any element of
15 the offense occurred before that date.

16 SECTION 36. Article 61.02, Code of Criminal Procedure, is
17 amended by amending Subsection (c) and adding Subsections (d) and
18 (e) to read as follows:

19 (c) Criminal information collected under this chapter
20 relating to a criminal street gang must:

21 (1) be relevant to the identification of an
22 organization that is reasonably suspected of involvement in
23 criminal activity; and

24 (2) consist of:

25 (A) a judgment under any law that includes, as a
26 finding or as an element of a criminal offense, participation in a
27 criminal street gang;

1 (B) a self-admission by the individual of
2 criminal street gang membership that is made during a judicial
3 proceeding; or

4 (C) except as provided by Subsection (d), any two
5 of the following:

6 (i) a self-admission by the individual of
7 criminal street gang membership that is not made during a judicial
8 proceeding , including the use of the Internet or other electronic
9 format or medium to post photographs or other documentation
10 identifying the individual as a member of a criminal street gang;

11 (ii) an identification of the individual as
12 a criminal street gang member by a reliable informant or other
13 individual;

14 (iii) a corroborated identification of the
15 individual as a criminal street gang member by an informant or other
16 individual of unknown reliability;

17 (iv) evidence that the individual frequents
18 a documented area of a criminal street gang and associates with
19 known criminal street gang members;

20 (v) evidence that the individual uses, in
21 more than an incidental manner, criminal street gang dress, hand
22 signals, tattoos, or symbols, including expressions of letters,
23 numbers, words, or marks, regardless of how or the means by [the —
24 ~~format or medium in~~] which the symbols are displayed, that are
25 associated with a criminal street gang that operates in an area
26 frequented by the individual and described by Subparagraph (iv);

27 [~~or~~]

1 (vi) evidence that the individual has been
2 arrested or taken into custody with known criminal street gang
3 members for an offense or conduct consistent with criminal street
4 gang activity ;

5 (vii) evidence that the individual has
6 visited a known criminal street gang member, other than a family
7 member of the individual, while the gang member is confined in or
8 committed to a penal institution; or

9 (viii) evidence of the individual 's use of
10 technology, including the Internet, to recruit new criminal street
11 gang members.

12 (d) Evidence described by Subsections (c)(2)(C)(iv) and
13 (vii) is not sufficient to create the eligibility of a person 's
14 information to be included in an intelligence database described by
15 this chapter unless the evidence is combined with information
16 described by another subparagraph of Subsection (c)(2)(C).

17 (e) In this article:

18 (1) "Family member" means a person related to another
19 person within the third degree by consanguinity or affinity, as
20 described by Subchapter B, Chapter 573, Government Code, except
21 that the term does not include a person who is considered to be
22 related to another person by affinity only as described by Section
23 573.024(b), Government Code.

24 (2) "Penal institution" means a confinement facility
25 operated by or under a contract with any division of the Texas
26 Department of Criminal Justice, a confinement facility operated by
27 or under contract with the Texas Youth Commission, or a juvenile

1 secure pre-adjudication or post-adjudication facility operated by
2 or under a local juvenile probation department, or a county jail.

3 SECTION 37. Article 61.06(b), Code of Criminal Procedure,
4 is amended to read as follows:

5 (b) Subject to Subsection (c), information collected under
6 this chapter relating to a criminal street gang must be removed from
7 an intelligence database established under Article 61.02 and the
8 intelligence database maintained by the department under Article
9 61.03 after five [~~three~~] years if:

10 (1) the information relates to the investigation or
11 prosecution of criminal activity engaged in by an individual other
12 than a child; and

13 (2) the individual who is the subject of the
14 information has not been arrested for criminal activity reported to
15 the department under Chapter 60.

16 SECTION 38. Article 61.06(c), Code of Criminal Procedure,
17 as amended by Chapters 258 (S.B. 11), 263 (S.B. 103), and 1308 (S.B.
18 909), Acts of the 80th Legislature, Regular Session, 2007, is
19 reenacted and amended to read as follows:

20 (c) In determining whether information is required to be
21 removed from an intelligence database under Subsection (b), the
22 five-year [~~three-year~~] period does not include any period during
23 which the individual who is the subject of the information is:

24 (1) confined in a correctional facility operated by or
25 under contract with the Texas Department of Criminal Justice;

26 (2) committed to a secure correctional facility
27 operated by or under contract with the Texas Youth Commission, as

1 defined by Section 51.02, Family Code; or

2 (3) confined in a county jail or confined in or
3 committed to a facility operated by a juvenile board in lieu of
4 being confined in a correctional facility operated by or under
5 contract with the Texas Department of Criminal Justice or being
6 committed to a secure correctional facility operated by or under
7 contract with the Texas Youth Commission.

8 SECTION 39. Article 61.06, Code of Criminal Procedure, as
9 amended by this Act, applies to any applicable information
10 maintained in an intelligence database under Chapter 61 of that
11 code on or after the effective date of this Act.

12 SECTION 40. Article 18.20, Code of Criminal Procedure, is
13 amended by adding Section 9A to read as follows:

14 Sec. 9A. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED
15 PERSON. (a) The requirements of Sections 8(a)(2)(B) and 9(b)(2)
16 relating to the specification of the facilities from which or the
17 place where a communication is to be intercepted do not apply if:

18 (1) in the case of an application for an order
19 authorizing the interception of an oral communication:

20 (A) the application contains a full and complete
21 statement as to why the specification is not practical and
22 identifies the person committing or believed to be committing the
23 offense and whose communications are to be intercepted; and

24 (B) a judge of competent jurisdiction finds that
25 the specification is not practical; and

26 (2) in the case of an application for an order
27 authorizing the interception of a wire or electronic communication:

1 (A) the application identifies the person
2 committing or believed to be committing the offense and whose
3 communications are to be intercepted;

4 (B) a judge of competent jurisdiction finds that
5 the applicant has made an adequate showing of probable cause to
6 believe that the actions of the person identified in the
7 application could have the effect of thwarting interception from a
8 specified facility; and

9 (C) the authority to intercept a wire or
10 electronic communication under the order is limited to a period in
11 which it is reasonable to presume that the person identified in the
12 application will be reasonably proximate to the interception
13 device.

14 (b) A person implementing an order authorizing the
15 interception of an oral communication that, in accordance with this
16 section, does not specify the facility from which or the place where
17 a communication is to be intercepted may begin interception only
18 after the person ascertains the place where the communication is to
19 be intercepted.

20 (c) A provider of wire or electronic communications that
21 receives an order authorizing the interception of a wire or
22 electronic communication that, in accordance with this section,
23 does not specify the facility from which or the place where a
24 communication is to be intercepted may move the court to modify or
25 quash the order on the ground that the provider 's assistance with
26 respect to the interception cannot be performed in a timely or
27 reasonable fashion. On notice to the state, the court shall decide

1 the motion expeditiously.

2 SECTION 41. Subchapter A, Chapter 411, Government Code, is
3 amended by adding Section 411.0207 to read as follows:

4 Sec. 411.0207. PUBLIC CORRUPTION UNIT. (a) In this
5 section, "organized criminal activity" means conduct that
6 constitutes an offense under Section 71.02, Penal Code.

7 (b) A public corruption unit is created within the
8 department to investigate and assist in the management of
9 allegations of participation in organized criminal activity by:

10 (1) an individual elected, appointed, or employed to
11 serve as a peace officer for a governmental entity of this state
12 under Article 2.12, Code of Criminal Procedure; or

13 (2) a federal law enforcement officer while performing
14 duties in this state.

15 (c) The unit shall:

16 (1) assist district attorneys and county attorneys in
17 the investigation and prosecution of allegations described by
18 Subsection (b);

19 (2) if requested by the agency, assist a state or local
20 law enforcement agency with the investigation of such allegations
21 against law enforcement officers in the agency;

22 (3) assist the United States Department of Justice or
23 any other appropriate federal department or agency in the
24 investigation and prosecution of allegations described by
25 Subsection (b);

26 (4) if requested by the agency, assist a federal law
27 enforcement agency with the investigation of such allegations

1 against law enforcement officers in the agency;

2 (5) serve as a clearinghouse for information relating
3 to the investigation and prosecution of allegations described by
4 Subsection (b); and

5 (6) report to the highest-ranking officer of the Texas
6 Rangers division of the department.

7 (d) On written approval of the director or of the chair of
8 the commission, the highest-ranking officer of the Texas Rangers
9 division of the department may initiate an investigation of an
10 allegation of participation in organized criminal activity by a law
11 enforcement officer described by Subsection (b)(1). Written
12 approval under this subsection must be based on cause.

13 (e) To the extent allowed by law, a state or local law
14 enforcement agency shall cooperate with the public corruption unit
15 by providing information requested by the unit as necessary to
16 carry out the purposes of this section. Information described by
17 this subsection is excepted from required disclosure under Chapter
18 552 in the manner provided by Section 552.108.

19 SECTION 42. Chapter 772, Government Code, is amended by
20 adding Section 772.007 to read as follows:

21 Sec. 772.007. TEXAS ANTI-GANG GRANT PROGRAM. (a) The
22 criminal justice division established under Section 772.006 shall
23 administer a competitive grant program to support regional,
24 multidisciplinary approaches to combat gang violence through the
25 coordination of gang prevention, intervention, and suppression
26 activities.

27 (b) The grant program administered under this section must

1 be directed toward regions of this state that have demonstrably
2 high levels of gang violence.

3 (c) The criminal justice division shall award grants to
4 qualified applicants, as determined by the division, that
5 demonstrate a comprehensive approach that balances gang
6 prevention, intervention, and suppression activities to reduce
7 gang violence.

8 (d) The criminal justice division shall include in the
9 biennial report required by Section 772.006(a)(9) detailed
10 reporting of the results and performance of the grant program
11 administered under this section.

12 (e) The criminal justice division may use any revenue
13 available for purposes of this section.

14 SECTION 43. Section 9A, Article 18.20, Code of Criminal
15 Procedure, as added by this Act, applies only to an application for
16 an order authorizing the interception of a wire, oral, or
17 electronic communication that is submitted on or after the
18 effective date of this Act. An application that was submitted
19 before the effective date of this Act is covered by the law in
20 effect on the date the application was submitted, and the former law
21 is continued in effect for that purpose.

22 SECTION 44. Not later than December 1, 2010, the Department
23 of Public Safety shall establish the public corruption unit under
24 Section 411.0207, Government Code, as added by this Act.

25 SECTION 45. To the extent of any conflict, this Act prevails
26 over another Act of the 81st Legislature, Regular Session, 2009,
27 relating to nonsubstantive additions to and corrections in enacted

1 codes.

2 SECTION 46. (a) The Legislative Budget Board shall prepare
3 an annual criminal justice policy impact statement for this Act.

4 (b) The impact statement must include information
5 concerning:

6 (1) the number of arrests and resulting criminal
7 dispositions under this Act;

8 (2) the fiscal impact of arrests, trials, convictions,
9 and imprisoning or imposing other sanctions on persons in
10 accordance with this Act;

11 (3) the race and ethnicity of persons arrested,
12 prosecuted, convicted, and incarcerated under this Act;

13 (4) the impact of this Act on existing correctional
14 facilities, as defined by Section 1.07, Penal Code;

15 (5) the likelihood that this Act may create a need for
16 additional prison capacity;

17 (6) civil action damages assessed and collected, and
18 assets seized and forfeited under this Act; and

19 (7) any other matter the Legislative Budget Board
20 determines relevant.

21 (c) The Legislative Budget Board shall complete the impact
22 statement not later than December 1 each year, beginning December
23 1, 2010, and make it available to the public on its website.

24 SECTION 47. (a) Except as provided by Subsection (b), this
25 Act takes effect September 1, 2009.

26 (b) Sections 37.110 and 51.973, Education Code, and Section
27 42.064, Human Resources Code, as added by this Act, take effect

1 immediately if this Act receives a vote of two-thirds of all the
2 members elected to each house, as provided by Section 39, Article
3 III, Texas Constitution. If this Act does not receive the vote
4 necessary for immediate effect, those sections of the Education
5 Code and Human Resources Code take effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 2086 was passed by the House on April 24, 2009, by the following vote: Yeas 140, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2086 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2086 on May 31, 2009, by the following vote: Yeas 142, Nays 1, 1 present, not voting.

Chief Clerk of the House

H.B. No. 2086

I certify that H.B. No. 2086 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2086 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor



LEGISLATIVE BUDGET BOARD

Robert E. Johnson Bldg.
1501 N. Congress Ave. - 5th Floor
Austin, TX 78701

512/463-1200
Fax: 512/475-2902
<http://www.lbb.state.tx.us>

MEMORANDUM

TO: Lt. Governor David Dewhurst Speaker Joe Straus
Senator Steve Ogden Representative Jim Pitts
Senator John Whitmire Representative Joe Moody
Senator Rodney Ellis

FROM: Michele Connolly, LBB Manager
Criminal Justice Data Analysis Team

DATE: December 1, 2010

SUBJECT: HB 2086 Annual Criminal Justice Policy Impact Statement

House Bill 2086, Eighty-first Legislature, Regular Session, 2009, directed the Legislative Budget Board to prepare an annual criminal justice policy impact statement related to the bill's provisions. The bill amended statute in various areas of criminal justice, but the requirements of the annual criminal justice policy impact statement primarily relate to changes in the Penal Code.

The bill expands the offenses which may be considered as Engaging in Organized Criminal Activity and enhances penalties for the offense of Criminal Solicitation of a Minor in certain instances. The bill also creates and defines the offense of Directing Activities of Certain Criminal Street Gangs. In addition to these Penal Code amendments, the bill allows certain civil actions to be taken against criminal street gangs.

Based on fiscal year 2010 arrest and disposition data from the Department of Public Safety (DPS), the various requirements of the annual criminal justice impact statement contained in the bill cannot be determined. DPS data does not provide the level of detail necessary to analyze the bill's amendments to certain Penal Code statutes. Also, the detail needed to separate the bill's specific amendments from broader offense categories is not available which prevents analysis of the race and ethnicity of persons affected by this bill. In addition, there were no arrests or prosecutions in fiscal year 2010 for the new offense created by the bill (Directing Activities of Certain Criminal Street Gangs). Data regarding civil action damages and asset forfeiture or seizure are not available to the LBB.

Though data limitations prevent a complete assessment as required by the bill for the annual criminal justice policy impact statement, no significant fiscal impact or significant impact to existing correctional facilities is anticipated based on the information available.

If you have any comments or questions about this annual criminal justice impact statement, or would like more information, please contact me at (512) 475-2489.



LEGISLATIVE BUDGET BOARD

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MEMORANDUM

TO: Lt. Governor David Dewhurst Speaker Joe Straus
Senator Steve Ogden Representative Jim Pitts
Senator John Whitmire Representative Jerry Madden
Senator Rodney Ellis

FROM: Adriana Marin, Analyst
Michele Connolly, Manager
Criminal Justice Data Analysis Team

DATE: December 1, 2011

SUBJECT: HB 2086 Annual Criminal Justice Policy Impact Statement

House Bill 2086, Eighty-first Legislature, Regular Session, 2009, directed the Legislative Budget Board to prepare an annual criminal justice policy impact statement related to the bill's provisions. The bill amended statute in various areas of criminal justice, but the requirements of the annual criminal justice policy impact statement primarily relate to changes in the Penal Code.

The bill expands the offenses which may be considered as Engaging in Organized Criminal Activity and enhances penalties for the offense of Criminal Solicitation of a Minor in certain instances. The bill also creates and defines the offense of Directing Activities of Certain Criminal Street Gangs. In addition to these Penal Code amendments, the bill allows certain civil actions to be taken against criminal street gangs.

Based on fiscal year 2011 arrest and disposition data provided by the Texas Department of Criminal Justice and the Department of Public Safety, the probable impact on criminal justice populations as a result of implementing the bill cannot be determined due to the unavailability of reliable data or information providing the level of detail necessary to analyze the bill's amendments to certain Penal Code statutes. Also, the detail needed to separate the bill's specific amendments from broader offense categories is not available, which prevents analysis of the race and ethnicity of persons affected by this bill.

In fiscal year 2011, approximately 1,950 individuals were arrested for escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in correctional facility (72.6% of White race and 26.5% of Black race; 33.4% of Hispanic ethnicity). Of those arrested in fiscal year 2011, approximately 185 were admitted to prison (69.9% of White race and 30.1% of Black race; 30.6% of Hispanic ethnicity) and approximately 70 were admitted to state jail (70.4% of White race and 29.6% of Black race; 29.6% of Hispanic ethnicity). It is unknown whether anyone engaging in organized criminal activity would appear to have committed the offense of escape, permitting or facilitating escape, implements for escape, or prohibited substances and items in correctional facility attributable to the aforementioned arrests, convictions, and incarcerations. In fiscal year 2011, less than 5 individuals were arrested, and less than 5 were admitted to prison for directing activities of certain criminal street gangs, as defined by the bill. Data regarding civil action damages and asset forfeiture or seizure are not available to the LBB.

Although data limitations prevent a complete assessment as required by the bill for the annual criminal justice policy impact statement, no significant fiscal impact or significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated based on the information available.

Please contact our office if you have any comments or questions concerning this annual criminal justice policy impact statement, or would like more information.



LEGISLATIVE BUDGET BOARD

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MEMORANDUM

TO: Lt. Governor David Dewhurst Speaker Joe Straus
Senator Tommy Williams Representative Jim Pitts
Senator John Whitmire Representative Jerry Madden
Senator Rodney Ellis

FROM: Ed Sinclair, Analyst
Michele Connolly, Manager
Criminal Justice Data Analysis Team

DATE: December 10, 2012

SUBJECT: HB 2086 Annual Criminal Justice Policy Impact Statement

House Bill 2086, Eighty-first Legislature, Regular Session, 2009, directed the Legislative Budget Board to prepare an annual criminal justice policy impact statement related to the bill's provisions. The bill amended statute in various areas of criminal justice, but the requirements of the annual criminal justice policy impact statement primarily relate to changes in the Penal Code.

The bill expands the offenses which may be considered as Engaging in Organized Criminal Activity and enhances penalties for the offense of Criminal Solicitation of a Minor in certain instances. The bill also creates and defines the offense of Directing Activities of Certain Criminal Street Gangs. In addition to these Penal Code amendments, the bill allows certain civil actions to be taken against criminal street gangs.

Based on fiscal year 2012 arrest and disposition data provided by the Texas Department of Criminal Justice and the Department of Public Safety, the probable impact on criminal justice populations as a result of implementing the bill cannot be determined due to the unavailability of reliable data or information providing the level of detail necessary to analyze the bill's amendments to certain Penal Code statutes. Also, the detail needed to separate the bill's specific amendments from broader offense categories is not available, which prevents analysis of the race and ethnicity of persons affected by this bill.

In fiscal year 2012, approximately 1,778 individuals were arrested for escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in correctional facility (72.0% of White race and 27.3% of Black race; 33.0% of Hispanic ethnicity). Of those arrested in fiscal year 2012, approximately 48 were admitted to prison (62.5% of White race and 37.5% of Black race; 16.7% of Hispanic ethnicity) and less than five were admitted to state jail. It is unknown whether anyone engaging in organized criminal activity would appear to have committed the offense of escape, permitting or facilitating escape, implements for escape, or prohibited substances and items in correctional facility attributable to the aforementioned arrests, convictions, and incarcerations. In fiscal year 2012, less than five individuals were arrested, and less than five were admitted to prison for directing activities of certain criminal street gangs, as defined by the bill. Data regarding civil action damages and asset forfeiture or seizure are not available to the LBB.

Although data limitations prevent a complete assessment as required by the bill for the annual criminal justice policy impact statement, no significant fiscal impact or significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated based on the information available.

Please contact our office if you have any comments or questions concerning this annual criminal justice policy impact statement, or would like more information.



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MEMORANDUM

TO: Lt. Governor David Dewhurst Speaker Joe Straus
Senator John Whitmire Representative Jim Pitts
Senator Rodney Ellis Representative Tan Parker
 Representative Joe Moody

FROM: John Posey, Analyst
Laurie Molina, Manager

DATE: December 5, 2013

SUBJECT: HB 2086 Annual Criminal Justice Policy Impact Statement

House Bill 2086, Eighty-first Legislature, Regular Session, 2009, directed the Legislative Budget Board to prepare an annual criminal justice policy impact statement related to the bill's provisions. The bill amended various statutes. The requirements of the annual criminal justice policy impact statement primarily relate to changes in the Penal Code.

The bill expands the offenses which may be considered as Engaging in Organized Criminal Activity and enhances penalties for the offense of Criminal Solicitation of a Minor in certain instances. The bill also creates and defines the offense of Directing Activities of Certain Criminal Street Gangs. In addition to these Penal Code amendments, the bill allows certain civil actions to be taken against criminal street gangs.

Based on fiscal year 2013 arrest and incarceration data provided by the Texas Department of Criminal Justice and the Department of Public Safety, the probable impact on criminal justice populations as a result of implementing the bill cannot be determined due to the unavailability of reliable data or information providing the level of detail necessary to analyze the bill's amendments to certain Penal Code statutes. This detail includes the location of the offenses (e.g., within 1,000 feet of a playground, shopping mall, etc.). This missing detail prevents some of the analysis of persons affected by this bill.

In fiscal year 2013, approximately 2,089 individuals were arrested for escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited

substances and items in a correctional facility (74.9% of White race and 24.3% of Black race; 34.0% of Hispanic ethnicity). Of those arrested in fiscal year 2013, approximately 50 were admitted to prison (76.0% of White race and 24.0% of Black race; 20.0% of Hispanic ethnicity) and less than five were admitted to state jail. Due to the data limitations discussed above, it is unknown whether anyone engaging in organized criminal activity would appear to have committed the offense of escape, permitting or facilitating escape, implements for escape, or prohibited substances and items in correctional facility attributable to the aforementioned arrests and incarcerations. In fiscal year 2013, five individuals were arrested, and none were admitted to prison or state jail, for directing activities of certain criminal street gangs as defined by the bill. Data regarding civil action damages and asset forfeiture or seizure are not available to the LBB.

Although data limitations prevent a complete assessment as required by the bill for the annual criminal justice policy impact statement, no significant fiscal impact or significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated based on the information available.

Please contact our office if you have any comments or questions concerning this annual criminal justice policy impact statement, or would like more information.

cc: John Opperman
Andrew Blifford
Larance Coleman
Keith Yawn
Brandon Dudley
Lesley French
Ellic Sahualla

Locking Up Racial Bias

States continue to look for ways to reduce disparities in the juvenile justice system.

BY SARAH BROWN

Minorities have disproportionately outnumbered whites in the nation's juvenile justice system for a long time. In 2010, all minorities combined comprised about 40 percent of the nation's youth, yet they accounted for nearly 70 percent of the population in secure juvenile facilities, according to the Department of Justice's Office of Juvenile Justice and Delinquency Prevention.

Nationally, custody rates for minority juveniles were 2.8 times higher than for whites, and in 18 states, the minority-to-white placement rate was more than 4 to 1. African-Americans are the most over-represented minority. In 42 states, in 2010, the placement rate for black juvenile offenders into residential correctional facilities exceeded that of all other racial and ethnic groups, according to the juvenile justice office.

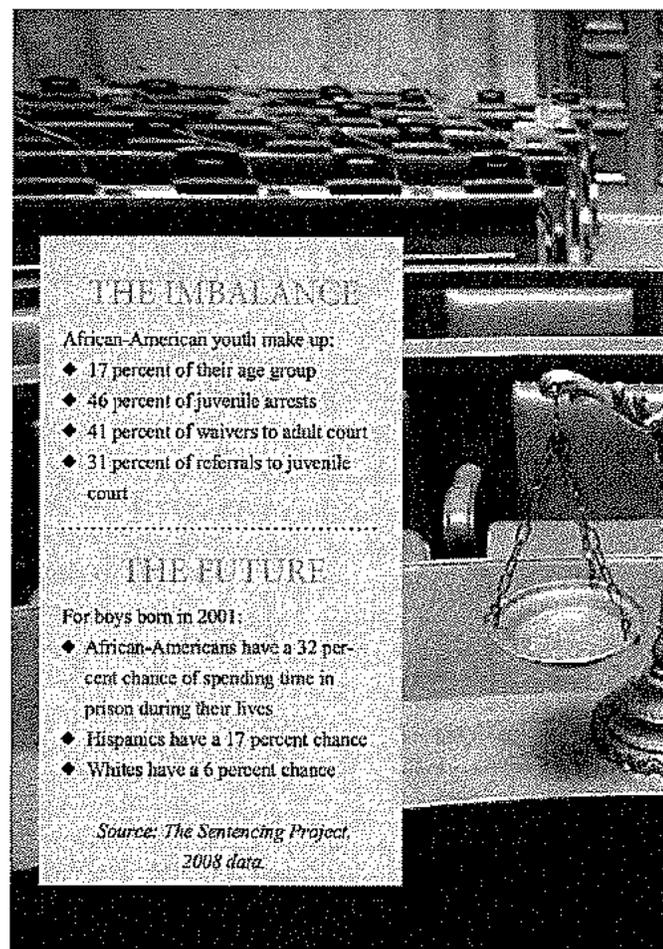
Reducing this imbalance is a goal of the federal Juvenile Justice and Delinquency Prevention Act, which requires states to try to eliminate disparities or face losing federal juvenile justice funding. Most states have made that effort, but the reasons these disparities exist are not always easily identified or even acknowledged, and solutions can be elusive. But numerous studies across the country document the problem persists.

Several states and cities are working to narrow the gap by requiring more racial impact analyses and race-neutral assessments, switching to more effective community-based programs, and training correctional and educational staff on cultural differences that may affect juvenile behavior.

Unintended Biases

Oregon lawmakers passed a bill this year requiring that all legislation be screened for language that might result in unequal targeting or treatment of minority youth. It's called a "racial impact statement" and it's a way to look, upfront, for procedures that could have unintended impacts on minorities.

Sarah Brown covers juvenile justice issues for NCSL.



THE IMBALANCE

African-American youth make up:

- ◆ 17 percent of their age group
- ◆ 46 percent of juvenile arrests
- ◆ 41 percent of waivers to adult court
- ◆ 31 percent of referrals to juvenile court

THE FUTURE

For boys born in 2001:

- ◆ African-Americans have a 32 percent chance of spending time in prison during their lives
- ◆ Hispanics have a 17 percent chance
- ◆ Whites have a 6 percent chance

Source: The Sentencing Project, 2008 data.

Iowa and Connecticut also have laws that require racial impact statements, while Minnesota conducts comparable analyses, but without legislation.

"Racial impact statements represent a constructive way to address disparities in the justice system," says Marc Mauer, executive director of The Sentencing Project in Washington, D.C. "These policies give legislators the opportunity to address any unintended result of a given law instead of having to amend it later."

When making detention decisions, officers' assessments of how likely a youth will offend often are subjective and have resulted in inequities. Georgia now requires juvenile justice staff and probation officers to use "race-neutral risk assessment instruments" in an effort to eliminate racial and ethnic bias and better indicate when detention is necessary. They evaluate a youth's probation status, history of appearing in court, prior record, and the seriousness of the current charge without unduly weighing social factors that increase the likelihood of being placed in detention.

For example, instead of asking if a young person lives with both his parents, a situation common to only 36 percent of African-Americans, a race-neutral assessment might ask if he lives with two adults capable of supervising him at home. Similarly, asking if a youth is involved in a "productive activity" when not in school can guide decisions about the most appropriate level of supervision.

Juvenile justice officials in Berks County, Penn., use a race-neutral assessment instrument to distinguish young offenders who pose a danger or flight risk from those who can stay

Juvenile Custody Rate Comparisons

The map illustrates how much the juvenile minority custody rate exceeded the white rate in 2010. For example, in 18 states, custody rates for minorities were more than four times higher than they were for whites.



Note: Custody rates are the number of juvenile offenders in residential placement per 100,000.
Source: The Department of Justice's Office of Juvenile Justice and Delinquency Prevention.

safely within the community with supervision. Many youth who stay in their homes must check in at a "reporting center" on weekday evenings, where they receive help with schoolwork and career-college exploration and participate in group counseling, recreation, enrichment activities and community service projects.

Allowing kids to remain in their own schools and neighborhoods helps them and the Pennsylvania county, authorities say. In 2009, minorities made up 90 percent of the population at the evening reporting center, and 96 percent completed supervision without re-offending that year. Because of the reporting center, Berks County reduced its out-of-home placement costs by \$2.4 million in 2009, with a further drop in 2010. And, in 2012, Berks County closed its juvenile detention center. The initiative also helped the county land nearly \$1 million in federal funding for a YouthBuild program to teach job skills.

Memphis, Tenn., starting using the SHAPE program in 2007 to reduce the number of minority students sent to juvenile detention. It diverts juveniles who commit minor offenses from the court system into a 14-week community program that teaches them skills to be drug free, make good decisions and change negative behaviors. It also requires some students to participate in community service projects, write letters of apology or pay for their misdeeds. A study by the University of Memphis showed a 60 percent decrease in the number of students sent to juvenile court over three years.

In 2007, Connecticut started sending all 16- and 17-year-olds directly to juvenile court rather than to the adult system, where a disproportionate number of minority kids had been sent in the past. The "Raise the Age" law, sponsored by Representative

Toni Walker (D) and Senator Toni Harp (D), "transformed a previously wasteful, punitive, ineffective and often abusive juvenile justice system into a national model—at no additional cost to taxpayers," Harp says on her website. It has steered thousands of 16-year-olds, a large percentage of them minorities, away from the adult criminal system, from which, according to Harp, they return worse off, not better.



Senator
Toni Harp (D)
Connecticut

Connecticut didn't stop there. The state also requires a judge's order for any admission to a juvenile detention facility, which has sharply reduced all admissions, especially those of minorities. State and judicial offices in Connecticut also must collect data on the number of minority youth in confinement and report their findings regularly to the General Assembly and governor. Currently, Connecticut lawmakers are considering a bill that would require public schools and police to establish clear guidelines for when police should be called to campuses. Such efforts have lowered police visits and reduced arrests of minorities for petty offenses.

Other initiatives include Maryland's requirement that police assigned to public schools receive cultural competency training, and a newly created council in Texas is charged with identifying racial disparities in the state's juvenile justice, child welfare and mental health systems.

Closing the racial gap in juvenile justice is a complex, challenging task, but with these and similar measures, lawmakers and criminal justice workers say they're beginning to see results.