BILL # SB 1476 **TITLE:** probation; facilities; safe communities act

SPONSOR: Huppenthal **STATUS:** Senate Engrossed

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FISCAL ANALYSIS

Description

SB 1476 would give the court the discretion in: 1) reducing the period a defendant is on supervised probation, through earned time credit (ETC), and 2) determining if an individual who violates a condition of their probation or commits a new crime should result in a term of imprisonment. Further, the bill requires the Legislature to annually appropriate to each county, up to 40% of any cost savings from reductions in the percentage of people on supervised probation who are admitted to the Department of Corrections (ADC).

Estimated Impact

SB 1476 includes 3 components that would result in a fiscal impact on the state. Overall, the net impact of the 3 provisions would be a state savings. The magnitude of the savings, however, will depend on actions the court takes regarding the impacted populations. The 3 impacts are:

First, the implementation of ETC's is anticipated to result in a savings to the state as a result of decreased probation caseloads and a reduction in revocations to ADC.

Second, the bill is anticipated to result in a net savings if the court begins to no longer revoke an individual's term of intensive probation for certain offenses that, under current law, would require a term of imprisonment. While this component would increase the cost to the state for probation services, a larger savings would result in ADC due to a reduced inmate population.

Third, the bill would require the Legislature to annually appropriate to each county, 40% of any cost savings from the first 2 provisions that result in reduced revocation rates.

The Council of State Governments Justice Center (CSG) has analyzed the bill and projects a gross ADC savings of $11.8 million. Based on JLBC Staff calculations, this amount may include a net savings to the state of $7.1 million and a distribution to the counties of $4.7 million. While the underlying assumptions in the analysis appear reasonable, the actual savings cannot be determined in advance with certainty. In addition, the bill would likely generate probation savings, which is not included in the CSG estimate.

Another factor may overstate potential savings. The above estimate does not take into account new crimes committed by probationers who would be on probation under current law but were released early due to ETC. In this circumstance, it would appear as if there was a state savings because the probationer was not revoked, but in reality the state would not realize those savings because the probationer still committed the crime. This issue requires further analysis before its potential impact can be estimated.

Analysis

The bill requires the Legislature to annually appropriate to each county a portion of the ADC savings from reducing: 1) ADC admissions resulting from probation violations (otherwise known a revocations), and 2) ADC admissions due to new crimes committed by probationers. In each case, counties would receive 20% of the ADC savings. Under the bill, these monies are to be deposited in the Adult Probation Services Fund of each county. These monies are to be used to increase the availability of substance abuse treatment and risk reduction and intervention programs for probationers as well as for grants to nonprofit victim services organizations for assisting victims and increasing the amount of restitution collected from probationers.

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Any savings associated with ADC's reduced inmate population, and therefore bed needs, would depend on a variety of factors, including the type and combination of beds (state beds, provisional beds, or private beds) being reduced or eliminated. These savings can range from $3,531 per inmate, per year, to $23,360, per inmate, per year, depending on the size of the decrease in population and the type of facility (public, private, or rented provisional) the bed may be eliminated from. If we reduce rented beds or the number of beds is large enough to eliminate a state prison unit, the savings would be at the higher end of the range.

An analysis completed by CSG Justice Center indicates this incentive to the counties would result in a gross savings to ADC in the amount of $2.7 million due to reduced revocations. Specifically, their analysis assumes a 3% reduction to an estimated 4,000 annual revocations, an average length of ADC stay of 1.1 years, and an annual cost to ADC of $20,805 per inmate, per year. Data received by ADC however, suggests that revocations and the average length of stay may be higher. The CSG estimated 3% reduction in revocations is, in part, due to counties' discretion in reducing revocations and anecdotal results experienced by a similar program in Texas. According to CSG, Texas reduced its probation revocations by 10-15%. In Texas however, these monies were given to counties upfront and not as a result of meeting performance targets.

While the assumptions made by CSG appear reasonable, these savings cannot be verified in advance with certainty. Of the $2.7 million in gross savings to ADC, approximately $1.1 million (or 40%) may be appropriated to the counties, yielding a net savings to the state of $1.6 million.

In addition, the bill would allow the court to adjust the period of a defendant's supervised probation on the recommendation of an adult probation officer for earned time credit. The amount of earned time credit would equal 20 days for every month that a defendant does all of the following:

1. Exhibits positive progression toward the goals and treatment of the defendant's case plan.
2. Has no new arrests.
3. Is current on payments for court ordered restitution, fines and fees.
4. Is current in completing community restitution.

If sentenced to probation, the state and counties (excluding Maricopa County as they fund their own programs) typically share the costs of adult probation, which includes standard and intensive programs. For the intensive programs, the state pays 100% of the cost (although the counties may provide offices and other support services), while for the standard programs and treatment services, the state predominantly pays for the cost of additional probation officers. On average, the state funded a total of 15,677 probationers at a cost of $24.7 million in FY 2007.

The number of probationers who would qualify for the ETC and the average time served for that population is unknown. To establish a possible maximum impact, the savings to the state could be as high as $9.9 million if all probationers qualified for the entire ETC. In that circumstance, probationers would only be serving 60%, or 30 days for every 50 days, of their probation sentence. These savings however, are overstated as some portion of the probation population would not qualify for the ETC. For example, in FY 2007, approximately 30% of the probation population had some type of technical violation. Excluding these individuals from the calculation, the savings would be reduced to $6.9 million.

In addition to these possible savings, the ETC is estimated to result in a net savings to ADC stemming from a reduction in the number of revocations to ADC. The magnitude of the savings cannot be determined with certainty at this time as it is unclear how many probationers, who under current law would have their probation revoked and be sentenced to a term of imprisonment, would change their behavior. Estimates completed by CSG however, indicate the ETC could potentially result in a gross savings to ADC of $9.1 million based on a projected 10% reduction in an estimated 4,000 annual revocations, an average length of stay of 1.1 years, and an annual cost to ADC of $20,805 per inmate per year. The 10% reduction in the number of probation revocations is based, in part, on a similar program in Nevada. According to the CSG Justice Center, Nevada's ETC program reduced revocations by approximately 20%. In Nevada however, the ETC program was for parolees not probationers.

While the assumptions made by CSG appear again reasonable, these savings cannot be verified in advance with certainty. Under the bill, it appears 40% (or $3.6 million) of these savings may be redirected to the counties. If this were the case, the net savings to the state would be approximately $5.5 million.

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Combining the CSG analysis implies the gross savings to ADC would be $11.8 million and the net savings may be $7.1 million. The gross savings is comprised of the $2.7 million saved from reduced revocations resulting from the county incentive component and the $9.1 million from ETC provision. Based on the bill's provisions 40%, or $4.7 million, may be distributed to the counties. As a result, the net savings to the state would be $7.1 million.

SB 1476 would also give the court the ability to determine if an individual on intensive probation who either, violates a condition of their probation that results in a serious threat or danger to the community or commits an additional felony offense, will be sentenced to a term of imprisonment. Under current law (A.R.S. § 13-917), the court is required to revoke the individual's term of intensive probation and impose a term of imprisonment. This element would result in a net savings to the state if the court decides not to impose a term of incarceration and rather allows the individual to remain on intensive probation. While this action would increase the state's cost for probation services, they would be more than offset by the costs avoided by the more expensive prison system. The extent, to which this would occur however, is unknown at this time and the amount of savings cannot be estimated.

Local Government Impact

SB 1476 would implement ETC, discretionary revocation authority for the courts, and additional funding for the counties, if they reduce revocation rates. Overall, the net impact of the 3 provisions would be a county savings. As mentioned previously, SB 1476 establishes a county incentive program where counties could receive 40% of any cost savings from reductions in the percentage of people from each county on supervised probation whose: 1) terms of supervised probation are revoked and are admitted to the ADC, or 2) are admitted to ADC for the conviction of a new crime. Based on the CSG estimates outlined above, the JLBC Staff estimates funding to the counties may total approximately $4.7 million. These monies would be used for various adult probation services, such as treatment programs, and grants to benefit victims of crime.

As the state funds the marginal probation caseload increases for all counties, excluding Maricopa County, any changes in probation caseloads resulting from this bill is not estimated to impact the counties. Maricopa County pays the full cost of its probation programs. As a result, Maricopa County would incur any savings from reduced caseloads. Under the bill, Maricopa County would also receive its share of any savings that result from any reductions in their revocation rate to ADC.

3/13/08