

**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: HB 3194 - A**

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session  
Legislative Fiscal Office

*Only Impacts on Original or Engrossed  
Versions are Considered Official*

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Date: 6-24-2013

**Measure Description:**

The measure makes changes to certain crimes; establishes the Justice Reinvestment Grant Program; establishes the Task Force on Public Safety; establishes the Center for Policing Excellence.

**Government Unit(s) Affected:**

Department of Corrections, Oregon Criminal Justice Commission, Department of Justice, District Attorneys and their Deputies, Judicial Department, Public Defense Services Commission, Oregon Youth Authority, Legislative Fiscal Office, Department of Administrative Services, Legislative Assembly, Cities, Counties

**Summary of Expenditure Impact:** See Analysis

**Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**Analysis:**

The measure makes changes to felony marijuana offenses, felony driving while suspended or revoked, and the Measure 57 crimes of robbery in the third degree and identity theft. Additionally the measure increases the transitional leave period from 30 days to 90 days prior to inmate discharge and provides for dispositional downward departure for certain Measure 57 crimes where the inmate is a repeat offender. All of these changes are anticipated to result in a reduction of offenders incarcerated in DOC facilities and increase the amount distributed to the community corrections departments of counties for probation, post-prison supervision, and local control.

The total bed count impact by the modifications within the measure is anticipated to be a reduction of approximately 700 beds in the 2013-2015 biennium and 840 beds in 2015-2017. DOC reports that this reduction will delay opening of additional permanent beds at Shutter Creek Correctional Institution and Deer Ridge Correctional Institution. If DOC caps the utilization of temporary and emergency beds at 700 the need for an additional facility, such as Junction City, may be deferred until 2020.

The fiscal impact savings to DOC operating budget is reported to be \$19.7 million General Fund in the 2013-2015 biennium as these changes take effect on sentences imposed on or after July 15, 2013. These savings include the reduction of 197 positions and 65.31 FTE. The increased distribution to community corrections is anticipated to be \$1.3 million General Fund in 2013-2015.

The 2015-2017 biennium savings to DOC are anticipated to be \$70 million General Fund as the measure's changes are fully implemented. The increased distribution to community corrections is anticipated to be \$3.6 million General Fund in 2015-2017.

The changes to Measure 57 crimes, transitional leave, downward disposition, reentry court and the Justice Reinvestment Grant Program sunset July 1, 2023. The following pages outline the specific changes including the potential expenditures within the measure by section.

### Sentencing Reform (Sec 1-8, 24-25)

The measure makes adjustments to the sentencing guidelines grid for marijuana possession, delivery or manufacture based on weight. Currently, marijuana possession offenses are a Class B felony regardless of weight; however, depending on the crime severity scale, some offenders will receive prison sentences while some receive felony probation. The Criminal Justice Commission (CJC) anticipates that the changes in the measure will result in offenders receiving felony probation rather than incarceration. In order to estimate the effect of the measure, the CJC used 2012 incarceration data to determine the potential future changes to offender placement. Of the 135 marijuana incarcerations in 2012, CJC estimates that 112 offenders would be sentenced to felony probation rather than incarceration. The average length of stay of these offenders was 17.8 months.

The measure reduces felony driving while suspended or revoked from a crime category 6 to a crime category 4 on the sentencing grid. Currently, felony driving while suspended or revoked offenders are incarcerated in a DOC facility with an average length of stay of 16 months. CJC assumes that the changes in the measure would result in these cases receiving felony probation. In order to estimate the effect of the measure, CJC used 2012 incarceration data to determine the potential future changes to offender placement. Of the 56 felony driving while suspended or revoked incarcerations, CJC estimates that approximately 41 would be sentenced to felony probation rather than incarceration.

The measure changes the presumptive sentence determined by the court for Measure 57 property offenders of robbery in the third degree and identity theft from a presumptive term of incarceration of 24 months to 18 months. The CJC anticipates that the changes to these certain property crimes will reduce the average length of stay for approximately 50 incarcerations per year for robbery in the third degree. For identity theft, CJC assumes that current sentences of over 60 months would not be affected by the changes in the measure due to the more serious nature. Using only sentences of less than 60 months for identity theft, CJC anticipates 185 convictions per year would be reduced from the average length of stay of 24 months to 18 months. The presumptive sentences would increase back to 24 months beginning July 1, 2023.

The measure modifies the crime of harassment to include distributing a visual recording of sexually explicit material of another person when the other person is under 18 years of age. Currently, harassment is a Class A misdemeanor and does not impact DOC's operations or community corrections budgets. Oregon Judicial Department (OJD) and CJC both note that this language is very similar to conduct that is already criminalized under current law, including under the Measure 11 crime of Using a Child in Display of a Sex Act which carries a mandatory minimum sentence of 70 months. The fiscal to community corrections departments, OJD, and Public Defense Services Commission (PDSC) is indeterminate as the extent of District Attorney's to utilize this misdemeanor harassment charge is indeterminate.

There is an indeterminate but expected to be minimal expenditure impact to OJD, District Attorneys, and PDSC as a result of these sentencing modifications. These estimates do not include the potential impact of recidivism by inmates affected by the changes to these crimes.

### Transitional Leave, Earned Discharge, and Downward Disposition (Sec 9-21)

The measure changes the transitional leave from 30 days to 90 days prior to inmate discharge date. This change is anticipated to increase the number of eligible inmates participating in the program at any one time. Currently, DOC's transitional leave caseload is between 135-145 individuals. Estimates provided by CJC anticipate 227 additional inmates will participate by the end of 2015. DOC's Offender Management and Rehabilitation unit anticipates the need for two permanent full-time positions to administer the augmented program at an estimated cost of \$529,618 General Fund in 2013-2015. These positions will assist in managing the increased number of applications for transition leave, investigations for violations and returns, and work as liaison between DOC and community corrections offices.

The measure makes changes to the process for granting, retracting and restoring supervision-related time credits earned. The maximum amount of time credits earned may not exceed 50% of the period of

supervision imposed or used to shorten the period of supervision to less than six months. The effect of this change is indeterminate, but anticipated to result in fewer individuals on probation supervision. The measure stipulates that baseline funding may not be decreases as a result of supervision-related time credits earned.

The measure repeals the Measure 57 statute that prohibited dispositional downward departure for certain drug trafficking cases where the individual is a repeat offender. This repeal is effective until July 1, 2023. CJC estimated the impact of repeat offenders receiving probation by analyzing pre-Measure 57 sentencing trends. Based on this data, CJC assumes approximately 100 offenders per year would receive downward dispositional departure to probation rather than incarceration.

#### Probation (Sec 22-23)

The measure allows for a supervising officer of DOC or a community corrections agency to file a proposed modification to the conditions of probation for a defendant placed under their supervision by the court. The measure allows the district attorney to file an objection to the proposed motion which will result in a hearing within a specified timeline. The supervision modification becomes operative five judicial days after filing unless the court enters an order denying the modification. There is a minimal fiscal impact to OJD and District Attorney's for processing, reviewing and hearing of proposed modifications to probation.

#### Task Force on Public Safety (Sec 55-58)

The measure creates a task force charged with reviewing the implementation of HB 3194, study conditional release hearings for juvenile Measure 11 offenders, and review the cost-reduction proposal submitted by DOC as required by the measure. The task force is required to submit a report to the Legislative Assembly by October 1, 2016. The CJC, DOC and DAS are directed to provide staff support to the task force. CJC may reimburse members who are not members of the Legislative Assembly for expenses. The task force shall meet at times and places specified by the call of the chair or majority of the members. This fiscal assumes that the fiscal impact of this task force is minimal and that the agencies required to staff the task force will use existing staff and resources to support the work of the task force. The task force is repealed on the convening of the 2017 regular session.

#### Measuring Outcomes (Sec 37-45; 48-49)

The measure requires CJC to serve as a clearinghouse and information center for data related to specialty courts and to develop evidence-based standards applicable to specialty courts designed to reduce recidivism and target medium and high-risk offenders. There is a minimal cost to CJC and OJD related to specialty courts.

The measure requires DAS to identify the state corrections population forecast's margin of error; requires CJC to identify a cost-benefit analysis tool; and requires statistical evaluations of recidivism rates to include an evaluation of "recidivism" as defined by the measure. This is anticipated to have a minimal fiscal impact to DAS and CJC.

The measure would require that fiscal impact statements prepared for measures that create a new crime, increase the period of incarceration for existing crime, or otherwise modify sentencing or state corrections policy must include ten year estimates of the fiscal impact of the measure. The Legislative Fiscal Office (LFO) notes that expanding fiscal impacts from the current two-biennium estimate can be absorbed within existing staff resources, but that additional staff would be needed if ten year estimates were expanded to include non-crime related measures.

The measure requires DOC to report to the legislature on cost containment solutions designed to reduce the per-inmate costs by 5% over a ten year period beginning July 1, 2013 while maintaining prison security and recidivism reduction programs. There is a minimal cost to DOC for these reporting requirements.

Center for Policing Excellence (Sec 46-47)

The measure establishes the Oregon Center for Policing Excellence within the Department of Public Safety Standards and Training (DPSST) for the purpose of making policing in Oregon more effective and efficient. The Center is directed to develop and promulgate updated skills in policing among officers, managers and administrators.

LFO notes that the measure does not specify the method of delivery to accomplish the purposes of the Center defined in the measure. Additionally, LFO notes that programs offered by DPSST are typically funded by Criminal Fine Account funds allocated by the legislature for that purpose.

DPSST proposes the establishment of two positions to support executive training and two positions to expand regional training with an estimated full biennium cost of \$1,201,654 Other Funds. Included in the estimated cost is the development of an evidenced-based training program that would consist of two week training courses for supervisors and mid-level management, a three-day class for executive level management, and a three-day Policing in Excellence Conference. DPSST notes that the data related to the evidence-based training is already available through a number of sources and would not require additional information technology costs for DPSST to compile or maintain the data.

Justice Reinvestment Grant Program and Reentry Courts (Sec 26-37; 50-54)

The measure establishes the Justice Reinvestment Grant Program, to be administered by the CJC. The program will provide grants to counties that establish a process to assess offenders and provide a continuum of community-based programs that reduce recidivism and decrease the county's utilization of DOC institutions. The measure outlines certain stipulation for the grant program rules to be adopted by the CJC, including the distribution of funds to participating counties by using the formula used to distribute baseline community corrections funding. The funds must be spent on community-based programs. The measure stipulates that beginning in July 1, 2015 not less than 10% of grant funds awarded must be spent on victims' services and that the CJC shall regularly evaluate the community-based programs that are being funded by the grants and report the results of the evaluations to the Legislature. The funding for the grants will be from funds appropriated to CJC for purposes of the program. The measure stipulates that baseline funding may not be decreased as a result of community-based programs funded through the grant program.

The measure establishes the Justice Reinvestment Grant Review Committee designed to review and approve grant applications subject to final approval by the CJC. The committee shall meet at times and places specified by the call of the chair or majority of the members. This fiscal assumes that the fiscal impact of this committee is minimal and that the CJC would staff the committee using existing staff and resources. Legislative members of the committee are entitled to compensation and expense reimbursement from funds appropriated to the Legislative Assembly.

The measure establishes the Justice Reinvestment Account separate and distinct from the General Fund continuously appropriates the moneys in the account to the CJC for the purpose of providing grants to counties for the Justice Reinvestment Grant Program.

The measure does not specify a funding level for the grant program. For the 2013-2015 biennium legislative leadership has agreed to provide a minimum of \$10 million General Fund, with the possibility of an additional \$5 million in the February 2014 session. CJC estimates the need for a full-time Program Analyst 4 position that would be responsible for start-up activities, including rulemaking and design of the program, evaluate community-based programs, conduct site reviews, and draft reports. CJC estimates a total cost of \$208,600 General Fund in the 2013-2015 biennium.

The measure establishes the framework for counties that choose to utilize grant funding for the operation of reentry courts. The number of counties that choose to participate in the Justice Reinvestment Grant Program to establish a reentry court is unknown. Based on DOC data, statewide there are 6,363 individuals per year that could be eligible to participate in a reentry court program.

According to estimates provided by OJD and PDSC, the costs related to reentry court could range from \$1.3 to 3.3 million depending on the caseload. It is assumed that counties operating a reentry court under this measure would be able to cover the cost of operating the program within the full grant award or provide additional funds from the county to supplement the grant amounts.