



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number:	S. 0051	Introduced on January 12, 2021
Author:	Malloy	
Subject:	Sentencing Reform	
Requestor:	Senate Judiciary	
RFA Analyst(s):	Gardner, Miller, and Williams	
Impact Date:	December 1, 2021	

Fiscal Impact Summary

This bill amends a significant number of criminal law statutes, including those related to supervision of offenders, restitution, revocations, parole proceedings, minimum sentences, penalty provisions, and drug courts.

This bill will have no expenditure impact for the House or Representatives or the Senate, as each body anticipates being able to manage any increase in costs associated with additional Sentencing Reform Oversight Committee meetings using existing General Fund resources.

This bill will have no expenditure impact for the Judicial Department, as the agency intends to use existing General Fund resources to manage any increase in general sessions, municipal, and magistrate court caseloads that may result from the removal of certain mandatory minimum sentences and the creation of intermediate penalties for specific offenses.

This bill will increase General Fund expenditures by \$108,000 and Federal Fund expenditures by \$102,000 in FY 2022-23 for the Department of Social Services (DSS) to develop, test, implement, and maintain the new data exchange program with the Department of Probation, Parole and Pardon Services (DPPPS).

This bill may result in an undetermined impact to General Fund revenue, Other Funds revenue, and local revenue due to the modifications in legal fines and fees associated with certain crimes.

This fiscal impact is pending, contingent upon a response from the Commission on Prosecution Coordination (CPC) Commission on Indigent Defense, Department of Corrections (SCDC), and DPPPS.

Explanation of Fiscal Impact

Introduced on January 12, 2021

State Expenditure

This bill amends a significant number of criminal law statutes, including those related to supervision of offenders, restitution, revocations, parole proceedings, minimum sentences, penalty provisions, and drug courts.

House of Representatives and Senate. Part V of this bill requires the Sentencing Reform Oversight Committee to study and review the collection of restitution and to submit to the General Assembly an annual report of findings and recommendations by January 15, 2022. This committee consists of eleven members, four from the Senate, four from the House of Representatives, and three members from the public. Each member from the legislative bodies receives a per diem of \$35, a subsistence amount of \$198.09, and a mileage amount of \$0.56 per mile for each required committee meeting occurring on days the legislature is not in session. Additionally, the three members from the public receive a per diem of \$35, a mileage amount of \$0.56 per mile, and a subsistence of \$42 or actual expenses, for each required committee meeting. Additionally, the staffing for this committee is to be provided by the General Assembly and should be managed with existing staff and within existing appropriations. The General Assembly anticipates being able to manage any increase in costs associated with additional Sentencing Reform Oversight Committee meetings using existing General Fund resources. Therefore, this bill will have no expenditure impact for the House of Repetitive or the Senate.

Judicial Department. Part IV of this bill establishes the Drug Court Program and requires the Chief Justice of the Supreme Court of South Carolina to appoint judges who will be responsible for implementing the Drug Court Program Act. The bill specifies that no additional salary may be accepted by an appointed judge who is an active member of the judicial system. Currently, the Chief Justice establishes Drug Court Programs and is the individual who may preside over them, pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution. These programs receive appropriated funding through the Solicitors Office, within the Prosecution Coordination Commission.

Additionally, the bill removes mandatory minimum sentences for certain inmates and creates intermediate penalties for specific offenses. During FY 2020-21, there were 566,872 cases related to offenses the bill will either change the mandatory minimum sentence or create an intermediate penalty for that were disposed in general sessions, municipal, and magistrate courts. While this bill may alter the number of cases or the duration of cases heard in court, the department intends to use existing General Fund resources to manage any modification in caseloads. Therefore, this bill will have no expenditure impact for the Judicial Department.

Department of Corrections. Part II of the bill requires SCDC to develop an intake case plan for all eligible inmates within 90 days of admission to reduce recidivism. Additionally, it allows inmates who have served 15 consecutive years in prison, and completed rehabilitation or education programs or shown exemplary behavior, to petition the court for early release. Also, this bill reduces the amount of time that must be accounted for in time served for no parole inmates based on certain criteria. The entirety of a no parole inmate's sentence must be served; however, a portion of this sentence may be served through earned credits. Currently, a minimum of 85 percent of the sentence must be accounted for in time served. The remaining 15 percent may be accounted for in credits earned, permitting the early release of the offender. This bill allows for early release for a no parole inmate if he has served a minimum of 65 percent of his sentence and if he has earned enough credits to cover the remaining 35 percent of the sentence.

Further, this bill increases the number of credits that may be earned by an inmate. Currently, an inmate may earn credits to cover up to 30 percent of his sentence, although credits may only reduce the sentence by 15 percent. This bill changes the number of credits that an inmate may earn and will enable an inmate to earn sufficient credits to be eligible for early release after 65 percent of his sentence has been served under the new criteria for time served. The following table displays how many credits may be earned under current law and this bill.

	Good Behavior Credits		Educational Credits		Total Available Annual Credits	
	<i>No. of Days</i>	<i>Percentage of Year</i>	<i>No. of Days</i>	<i>Percentage of Year</i>	<i>No. of Days</i>	<i>Percentage of Year</i>
Current Law	36	10%	72	20%	108	30%
Proposed	72	20%	144	39%	144*	39%

**This bill limits the total annual credits to 144 days.*

Based on a response from similar bills from SCDC, RFA anticipates this section of the bill will result in General Fund expenditure savings for SCDC. The average annual General Fund expenditure per inmate is approximately \$3,421. Therefore, this bill will result in a General Fund expenditure savings of \$3,421 per inmate, per year for those years that the inmate would have otherwise served. However, the timing and total amount of the General Fund expenditure savings will depend upon the sentencing of inmates and the number of inmates who meet all other criteria for an earlier release date. The following table displays the total potential reduction in time served based on an average sentence of 13 years, which is the average length of a prison sentence for no parole inmates, based on information provided by SCDC on similar bills.

	Time Served	Average Sentence Time	Time Served for Eligible Early Release	Potential Reduction in Time Served
Current Law	85%	13.0	11.05	N/A
Proposed Reduction	65%	13.0	8.45	4.55

Source: Department of Corrections and Revenue and Fiscal Affairs Office

Further, Part III of this bill reduces the required incarceration time and otherwise restructures the penalty schedule for offenses pertaining to the following subjects:

Administration of the Government	Highways, Bridges, and Ferries
Aeronautics	Hotels, Motels, Restaurants and Boardinghouses
Agriculture	Insurance
Alcohol and Alcoholic Beverages	Labor and Employment
Amusements and Athletic Contests	Law Enforcement and Public Safety
Animals, Livestock, and Poultry	Magistrates and Constables
Banking, Financial Institutions, and Money	Mortgages and Other Liens
Civil Remedies and Procedures	Motor Vehicles
Commercial Code	Municipal Corporations
Corporations, Partnerships, and Associations	Ports and Maritime Matters
Corrections, Jails, Probations, Pardons, and Pardons	Professions and Occupations
Counties	Property and Conveyances
Courts	Public Buildings and Property
Crimes and Offenses	Public Finance
Criminal Procedures	Public Officers and Employees
Domestic Relations	Public Utilities, Services and Carriers
Education	South Carolina Children's Code
Elections	Taxation
Environmental Protection and Conservation	Trade and Commerce
Fish, Game, and Watercraft	Waters, Water Resources, and Drainage
General Assembly	Workers' Compensation
Health	

This restructuring may alter the amount of time an inmate spends in the custody of SCDC, which may result in expenditure savings for the agency. However, the expenditure impact is pending, contingent upon a response from the department.

Department of Probation, Parole, and Pardon Services. Parts I and II of the bill effectively reduce the amount of time a former inmate must spend under the supervision of DPPPS through various statutory revisions. These revisions include modifying certain statutes on compliance credits to allow inmates to earn credits faster, reducing the mandatory probation period for certain crimes, and allowing for more petitions to the court for parole and early release, among other changes.

Also, Part I of the bill also requires DPPPS to coordinate with DSS on a data exchange system to evaluate client compliance with probation, parole, and community supervision requirements to determine eligibility for continued public assistance. Inmates who have completed their sentences or are compliant with probation, parole, or community supervision will be eligible for welfare and food assistance programs.

The expenditure impact is pending, contingent upon a response from the department.

Commission on Prosecution Coordination. This bill provides prison sentencing reform, among other changes. This may result in a shift of cost to manage offenders currently housed in state correctional facilities to solicitors, courts, local law enforcement, and DPPPS.

Additionally, Part IV of the bill creates the Drug Court Program Act, which requires the Judicial Department to ensure each circuit solicitor establishes a drug court program in his respective circuit for adults and juveniles who commit nonviolent offenses. Circuit solicitors are authorized to establish an Office of Drug Court Program Coordinator to assist in the implementation of the drug court program within the circuit. CPC will oversee administrative procedures and maintain and distribute designated General Fund monies for these programs. This portion of the bill also establishes eligibility requirements for participants in drug court programs and establishes record keeping procedures. Additionally, the bill will create the Office of Statewide Drug Court Coordinator within the CPC. The Coordinator, who will assist in the development of drug court standards, training programs, and evaluation procedures, will be funded by a General Fund appropriation to the CPC. Currently, CPC receives appropriations for various drug courts within the state, including \$1,897,000 in General Fund appropriations.

Participants of any drug court program must pay a \$150 fee to the local circuit solicitor's office in order to enroll in the program. These fees will be remitted to the CPC for deposit into a designated drug court general fund for administration of the drug court program.

Each circuit solicitor's office must provide to CPC and the Sentencing Reform Oversight Committee an annual report containing details of the local drug court program. CPC will develop a list of drug court participants, and the Chief Justice will appoint all drug court judges, who will not receive an additional salary except in specific instances.

The expenditure impact is pending, contingent upon a response from the commission.

Commission on Indigent Defense. This bill provides prison sentencing reform, among other changes. The expenditure impact is pending, contingent upon a response from the commission.

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

The bill also requires the department to develop a data exchange system with DPPPS to evaluate client compliance with probation, parole, and community supervision requirements for the purposes of determining eligibility for continued public assistance. In 2017, the department completed a similar data exchange project with the National Directory of New Hires. This project sustained non-recurring expenditures of \$200,000. The department estimates that

expenditures related to the development, testing, implementation, and maintenance of the new data exchange program with DPPPS would total \$210,000. As such, the bill is expected to increase the agency's General Fund expenditures by \$108,000 and its Federal Fund expenditures by \$102,000 in FY 2022-23.

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

State Revenue

This bill amends a significant number of criminal law statutes, including those related to supervision of offenders, restitution, revocations, parole proceedings, minimum sentences, penalty provisions, and drug courts. These amendments may result in a change in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds and local funds. Therefore, the Revenue and Fiscal Affairs Office (RFA) anticipates this bill may result in an undetermined impact to General Fund revenue, Other Funds revenue, and local revenue due to the modifications in fines and fees collections in court.

Additionally, this bill establishes the Drug Court Act. Currently, there are drug courts in each of the judicial circuits within the state. This bill specifies that participants of any drug court program must pay a \$150 fee to the local circuit solicitor's office in order to enroll in the program. These fees will be remitted to the CPC for deposit into a designated drug court general fund for administration of the drug court program. Dependent upon current fees associated with drug courts through the state, RFA anticipates this bill may result in a change in Other Funds revenue for the CPC.

Local Expenditure

This bill provides that administrative sanctions may be issued to parolees and probationers who violate conditions of community supervision programs. The administrative sanctions must include jail time consisting of a maximum of 3 days confinement for a first jail sanction and a maximum of 10 days confinement for a second jail sanction. The confinement sanctions may be served on weekends.

The following is a response from Lancaster and Florence Counties and the South Carolina Association of Counties (SCAC) on the potential expenditure impact of a similar bill, H. 3322 of 2019. Both entities indicated that, due to work schedules for parolees and probationers, they expect that most who must serve confinement sanctions will choose to serve those times on the weekends. As local law enforcement agencies have the highest occupancy rates on weekends, overcrowding may occur at local jails during those times as a result of the bill.

In considering the overall fiscal impact of the bill, the SCAC conferred with the South Carolina Jail Administrators Association to survey the 12 county jails to determine the average daily cost of housing an inmate, which was calculated as \$61.18, not including healthcare or medical costs.

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

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

Local Revenue

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