

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 73 (Wiener) – As Introduced December 10, 2020

Policy Committee: Public Safety

Vote: 6 - 1

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill authorizes the court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation.

FISCAL EFFECT:

- 1) Possible costs (local costs and Proposition 30-General Fund) in the low hundreds of thousands of dollars annually to county probation departments for increased costs of supervision given these drug crimes are not currently eligible for probation. GF costs will depend on whether the duties imposed on county probation departments by this bill are considered a state reimbursable mandate by the Commission on State Mandates.
- 2) Cost savings possibly in the millions of dollars annually (GF) to the California Department of Corrections and Rehabilitation and local county jails in incarceration costs. The annual cost per year to house an inmate in state prison is approximately \$87,000. If a court grants probation to 10 defendants that might have otherwise been sentenced to an average of two years in state prison, cost savings to the GF in incarceration costs would be \$1.7 million dollars.
- 3) Minor absorbable costs (Trial Court Trust Fund) for courts to determine whether probation is appropriate for specified drug crimes.

COMMENTS:

- 1) **Purpose.** According to the author:

Senate Bill 73 will repeal mandatory minimum sentences for persons convicted of specified nonviolent drug offenses and provides judges with the discretion to grant probation. Mandatory minimums contribute to the crisis of mass incarceration, which costs California billions of dollars each year that the state should be investing in schools, infrastructure, healthcare, and other nonprofits to make our communities and economy stronger.

- 2) **Background.** According to the California State Controller, probation operating costs grew by \$372 million (33.6%) from 2011 to 2015. During the same period, operating costs for adult detention (i.e., jail) grew by \$319 million (11.3%) and operating costs for juvenile

detention grew by \$50 million (4.8%). These figures do not include capital outlays. Proposition 30 (2012) generally exempts the state from mandated reimbursement for realigned responsibilities for “Public Safety Services” including managing local jails and probation services for adults. However, Proposition 30 also provides legislation enacted after September 30, 2012, that has an overall effect of increasing costs already borne by a local agency for public safety services transferred by the 2011 realignment legislation applies to local agencies only if the state provides annual funding for any costs increase. If local costs resulting from this measure are determined to be included within the scope of Proposition 30, the local agency would not be obligated to provide probation services required by this bill above the level for which funding is provided by the state.

This bill would allow a court to grant probation for a controlled substance offense that is currently either ineligible or presumptively-ineligible for probation, except in a case in which a person uses, solicits, induces, encourages, or intimidates a minor to act as an agent to manufacture or sell controlled substances. The provisions of this bill may lead to the additional allocation of funds to obtain local compliance, resulting in cost pressure on the General Fund. Although Government Code section 17556, subdivision (g) prohibits reimbursement for a criminal penalty change, Proposition 30 was enacted after relevant provisions of section 17556 and may require reimbursement for legislation enacted after September 30, 2012, that has the overall effect of increasing cost burdens on local law enforcement. Proposition 30 has never been litigated, therefore, it is unknown whether section 17556, subdivision (g) still controls. If so, costs to local probation departments for increased supervision would not be reimbursable.

3) **Argument in Support.** According to Fresno Barrios Unidos:

It is well known that the war on drugs has been disproportionately waged against African-American and Latinx families, separating parents from children and causing long-term collateral consequences, including loss of job opportunities, housing and education benefits. For non-citizens, a drug offense can make an individual deportable or inadmissible which means complete banishment from the U.S. and indefinite family separation.

4) **Argument in Opposition.** According to the California Association of Highway Patrolmen:

We believe many of the penalties related to controlled substances work as a deterrent or a reason for individuals to get the treatment they need to turn their lives around. Furthermore, we believe SB 73 will cause an increase in the selling and personal use of drugs, which will lead to greater crime and arrests in our communities.

5) **Prior Legislation.**

- a) AB 378 (Wiener), of the 2019-2020 Legislative Session, was largely similar to this bill and was held in the Assembly Rules Committee.

- b) AB 607 (Carrillo), of the 2019-2020 Legislative Session, was largely similar to this bill and was held on the Senate Appropriations Suspense File.
- c) SB 1025 (Skinner), of the 2017-2018 Legislative Session, was largely similar to this bill and was never taken up on the Assembly Floor.

Analysis Prepared by: Kimberly Horiuchi / APPR. / (916) 319-2081