

HB 2355 A STAFF MEASURE SUMMARY

House Committee On Judiciary

Action Date: 03/30/17

Action: Do pass with amendments
and be referred to Ways and Means by prior reference. (Printed A-Eng.)

Vote: 8-2-1-0

Yeas: 8 - Barker, Gorsek, Greenlick, Lininger, Sanchez, Sprenger, Vial, Williamson

Nays: 2 - Olson, Post

Exc: 1 - Stark

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Josh Nasbe, Counsel

WHAT THE MEASURE DOES:

Reduces punishment for possession of certain controlled substances from felony to misdemeanor in specified circumstances. Maintains community corrections supervision, application of earned discharge and exclusive circuit court jurisdiction over misdemeanor offense. Requires law enforcement agencies to record specified information related to pedestrian and vehicle stops, including race and gender of person stopped, legal reason for stop and disposition of stop. Phases in recording requirement based on size of agency. Directs Criminal Justice Commission (CJC) to review compiled information to identify patterns or practices of profiling. Requires CJC to provide annual report to legislative committees, Office of Governor and Department of Public Safety Standards and Training (DPSST). Authorizes DPSST to provide advice or assistance to law enforcement agencies identified in report and requires summary of advice or assistance provided to be presented at public meeting of local public safety coordinating council. Directs DPSST to establish mandatory educational programs to reduce profiling. Requires Department of State Police to develop a standard profiling complaint report form and modifies certain complaint procedures. Reduces maximum penalty for conviction for Class A misdemeanor from 365 days imprisonment to 364 days. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Data needed to assess extent of profiling in Oregon and provide appropriate training
- Outward facing, publicly transparent process to address instances of profiling
- Reduce collateral consequences of drug addictions that are often associated with racial disparities

EFFECT OF AMENDMENT:

Modifies circumstances under which possession of a controlled substance is classified as a felony. Makes possession a felony if the defendant possesses a usable quantity of a controlled substance and one of four factors is present: 1) The defendant has a prior felony conviction of any kind; 2) The defendant has two or more prior convictions for possessing a usable quantity of a controlled substance; 3) The offense is a commercial drug offense; or 4) The defendant possesses more than a specified amount of certain controlled substances. Applies earned discharge to misdemeanor possession crimes and requires that these crimes be prosecuted in circuit court. Directs CJC to study effect of reduction in possession penalties on criminal justice system, rates of recidivism and composition of convicted offenders. Requires law enforcement agency to submit to Law Enforcement Contacts Policy and Data Review Committee annual report summarizing profiling complaints and their disposition. Directs Department of State Police to develop standardized profiling complaint form. Reduces maximum length of Class A misdemeanor offense to 364 days.

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BACKGROUND:

Currently, possession of certain controlled substances is classified as a felony and carries with it a number of collateral consequences, including those that may affect employment, housing, jury service and the ability to possess a firearm. House Bill 2355-A punishes possession of these controlled substances as a Class A misdemeanor but retains the felony punishment if the defendant possesses a usable quantity of a controlled substance and one of four factors is present: 1) The defendant has a prior felony conviction of any kind; 2) The defendant has two or more prior convictions for possessing a usable quantity of a controlled substance; 3) The offense is a commercial drug offense; or 4) The defendant possesses more than a specified amount of certain controlled substances. A person convicted of a Class A misdemeanor may be sentenced to probation, up to one year's imprisonment, a fine of up to \$6,250 or a combination of these punishments. HB 2355-A retains authority under several existing statutes to allow the district attorney, the court or both working together, to reduce certain possession crimes from a felony to a misdemeanor or to offer a conditional discharge. See ORS 161.570; 161.705; 475.245. HB 2355-A also continues to apply earned discharge to these possession crimes and continues to require that they be prosecuted in circuit court. It requires the CJC to study the effect of the reduction in these possession penalties.

In 2001, the Legislative Assembly established the Law Enforcement Contacts Policy and Data Review Committee (Committee) to ensure that law enforcement agencies perform their missions without inequitable or unlawful discrimination based on race, color or national origin. See ORS 131.906. The Committee is, among other tasks, directed to collect and analyze demographic data obtained from law enforcement, while providing information and assistance to these agencies and the communities they serve. More recently, the 2015 Legislative Assembly directed law enforcement agencies to adopt prohibitions on profiling, as well as a profiling complaint process that allows individuals to submit, and the Committee to forward, profiling-related complaints to a law enforcement agency for investigation.

HB 2355-A requires the CJC, with the Department of State Police and Justice Department, to develop a standard method of recording traffic and pedestrian stop data by July 1, 2018. DPSST must develop training on collecting data by July 1, 2018. Depending on the size of the law enforcement agency, an agency must begin recording data by July 1 of 2018, 2019, or 2020 and begin annually reporting the data to the CJC one year later. The CJC must report on the data annually, beginning by December 1, 2019, to the Governor, DPSST, and legislature. DPSST may provide advice or assistance to law enforcement agencies identified in the report and, if it does so, must present a summary of the advice or assistance at a public meeting of the local public safety coordinating council.