

Fiscal Estimate Narratives

DOC 12/27/2011

LRB Number 11-2963/1	Introduction Number AB-0405	Estimate Type Original
Description Making fourth offense operating while intoxicated a felony and providing a penalty		

Assumptions Used in Arriving at Fiscal Estimate

Under current law there are various penalties for persons convicted of operating a motor vehicle while intoxicated (OWI), with the imprisonment terms and fines increasing with each subsequent conviction. This bill proposes changes to the penalty provisions associated with 4th Offense OWI convictions.

Criminal Penalties:

4th Offense OWI

Currently, if a person is convicted of a 4th Offense OWI, the crime may be penalized as a Class H felony or an unclassified felony if there is a child under 16 in the vehicle at the time of the offense, injury was caused, or if the 4th offense occurred within 5 years of the offender's previous OWI offense. Absent these circumstances, an OWI 4th offense is penalized as a misdemeanor. This bill increases all 4th OWI offenses to a Class H Felony, requiring a six month minimum term of imprisonment and allowing for penalties of up to 3 years of confinement time and 3 years of extended supervision. This bill eliminates the option for a reduced period of imprisonment based on successfully completing a period of probation that includes alcohol and other drug treatment for 4th Offense OWI offenders.

Population Estimates:

For purposes of this fiscal estimate the Department of Transportation's (DOT) calendar year (CY) 2009 OWI conviction information is used to estimate additional staffing and funding that would be needed if convictions remained as they were in 2009 under the new penalty structures. 2009 Act 100 became effective on July 1, 2010, so the conviction data used for portions of this estimate does not reflect any impact that may have resulted from that legislation. In CY2009, there were 1,129 convictions for 4th Offense OWI.

After Act 100 took effect, the Department of Corrections (DOC) received admissions to prison and community supervision for 4th Offense OWI convictions. In FY11, 56 offenders were admitted to prison, and 351 offenders were admitted to probation for 4th Offense OWI. This fiscal estimate factors in the current rate of convictions when estimating what population changes may result from this legislation.

Concerning sentencing assumptions, it was assumed 90% of the 4th Offense OWI offenders would be sentenced to 2 years prison and 3 years extended supervision, and 10% of the 4th Offense OWI offenders would be placed on probation for 3 years.

DOC Adult Institutions:

The Department would see an increase to its inmate populations of 946 by the end of the first full year after enactment of this legislation. Once populations are fully annualized the Department would see a permanent increase to current population levels of 1,892 additional inmates. Although these population estimates could be reduced if OWI offenders successfully complete an Earned Release Program (ERP), it is not possible to predict how many offenders would qualify for ERP, how many would successfully complete the program, and finally, what the impact would be on the incarceration portion of their sentence structures.

Contract Beds - If the Department utilized contract beds at its current \$51.46 per day rate to accommodate the increased populations, increased contract bed funding of approximately \$9.6 million would be needed in the first 12 months after enactment of this legislation. An ongoing increase to the Department's contract bed funding of approximately \$35.5 million per year would be needed once these populations annualize at a permanent increase of 1,892 inmates.

These new OWI offenders would need AODA programming that is not available in the Department's contract beds. New AODA programs would need to be created within the Department's current facilities. The Department would need 58.00 additional FTE in the first year after enactment and a total of 214.50

additional FTE once the full increase of 1,892 inmates is reached. The new AODA staffing includes:

- ... 189.25 FTE Social Workers (ratio of one social worker for every ten offenders),
- ... 19.00 FTE Correctional Program Supervisors, and
- ... 6.25 FTE Treatment Specialists

It is anticipated that the Department would need approximately \$16.5 million annually to run these programs as well as approximately \$405,000 in start-up costs. These costs do not include remodeling/construction costs that may be needed to create the kind of program spaces that are needed for AODA programming.

New Construction - If the Department constructed new facilities to accommodate these increased OWI populations, the Drug Abuse Correctional Center (DACC), which is totally dedicated to AODA programming, would be used as the model for these new facilities. The Department would need to construct 3 new facilities to accommodate the number of inmates that would enter the system the first full year after enactment of this legislation. A total of 6 new facilities would be needed to accommodate the ongoing population increase of 1,892 inmates. Construction of the new 300 bed DACC facility is estimated to be \$13.9 million; construction of 6 similar facilities would cost approximately \$83.4 million.

Using FY11 DACC per inmate annual costs (\$103.64/day), the Department estimates a need for increased operating funding of over \$19.3 million to open 3 new facilities as inmates phase into prison beds during the first year. Increased funding of approximately \$71.5 million annually would be needed to operate 6 new facilities on an ongoing basis.

DOC Community Corrections:

During the first two years, the Department would see increased costs mostly from more prison admissions, while the Division of Community Corrections (DCC) would see some 4th Offense OWI offenders placed on probation and would continue to supervise 4th Offense OWI offenders currently serving their terms of probation or extended supervision (ES). During the third year, community populations would begin to increase, including inmates who have been released back into the community on ES. After this proposed legislation has been law for five years, the Department anticipates a permanent increase to its community populations of 1,885 OWI offenders.

Community Corrections Staffing/Costs – Assuming these OWI offenders would be provided an enhanced supervision model similar to what is currently being used for 2nd and 3rd offense OWI offenders, and the Department's Case Classification/Staff Deployment calculations are used to estimate additional staffing needs associated with these increased populations, the Department would need 62.00 additional FTE once the full level of 1,885 offenders is reached (43.25 FTE Probation and Parole Agents, 4.35 FTE Field Supervisors and 14.40 FTE clerical support positions).

If FY11 average costs of a DCC probation/parole offender (\$7.85/day) are used to estimate additional funding needed to provide community supervision for this increased population, the Department would need approximately \$5.4 million on an annual ongoing basis once the full population increase of 1,885 is reached.

It is anticipated that purchase of services (assessment/treatment) funding for this type of offender would be much greater than the average DCC offender. Additional AODA treatment in the community could be needed in the following areas:

- ... Aftercare treatment - approx. \$25/offender (1x per month for 4 months)
- ... Outpatient treatment – approx. \$133/offender (1x per month for 3 months)
- ... Intensive outpatient treatment – approx. \$633/offender (4x per week for 3 months)
- ... Inpatient Treatment – approximately \$120/day/offender
- 90 day (3 mo) program totals \$10,800/offender
- 120 day (4 mo) program totals \$14,400/offender
- 180 day (6 mo) program totals \$21,600 per offender

Although it is assumed that most of the DCC OWI offenders will need some of the additional AODA treatment noted above, it is not possible to predict what percentage of these offenders will need each of these different types of AODA treatment options. In addition, the Department would likely need to pay for a small percentage of OWI assessments as well. These average approximately \$225 per offender. The treatment and assessment costs are not included in the estimates provided.

Electronic Monitoring – The Department would utilize Transdermal Alcohol Devices (TADs) or Sobrietors on 100% of the community OWI offenders for the first year of their community supervision. Costs for TADs are

\$7.61/day and costs for sobrieters are \$2.40/day. Based on current experience related to 2009 Act 100, the Department estimates it would pay for ignition interlock devices for approximately 10% of all offenders. Interlock devices require a \$60.00 installation fee, \$70.00 monthly fee, \$60.00 one time security fee and a \$90.00/year charge for recalibration which is needed every 60 days.

Using the CY2009 DOT conviction numbers, equipment costs are projected to be approximately \$1.1 million annually upon stabilizing after this legislation has been law for three years. On an ongoing basis the Monitoring Center would need 8.95 additional staff at a cost of approximately \$500,000.

Local County Jail Costs:

Currently, misdemeanor 4th Offense OWI offenders have a minimum confinement time of 60 days up to a maximum of 1 year in a county jail. A county may opt to offer a reduced minimum period of imprisonment (29 days) for the offender if a period of probation is successfully completed that includes alcohol and other drug treatment.

This legislation repeals this option for sentencing of 4th OWI offenses, and increases the minimum imprisonment time to 6 months, to a maximum of 3 years of confinement and 3 years of extended supervision. An offender may be placed on probation for a maximum of 3 years, with a minimum of 6 months in the county jail.

Since the minimum confinement time for 4th Offense OWI offenders increases under this legislation, county jail confinement time ordered by judges could cause local jail costs to increase. If sentenced to prison (for confinement times greater than 1 year), costs would shift from local jails to the Department of Corrections. However, it is not possible to predict what the sentencing practices of judges will be in these cases. If county jail time sentences increase as a result of this legislation, local county jails will see increased costs. If county jail time sentences are replaced with prison sentences, county jail costs could decrease.

SUMMARY:

Using CY2009 DOT conviction data and population assumptions that predict 90% of 4th Offense OWI sentences would be sentenced to prison the estimated increase in operating costs to the Department of Corrections would be between \$59.1 million and \$78.5 million annually.

Additional costs may also be incurred by local county jails as the result of increasing the severity of the penalties related to 4th Offense OWI arrests.

The precise cost impact of this legislation will ultimately depend on the sentencing practices of judges under the new penalty structures and the number of offenders who violate these specific offenses.

Long-Range Fiscal Implications