

### Fiscal Estimate - 2011 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>11-2144/2</b>	<b>Introduction Number</b> <b>AB-0670</b>	
<b>Description</b> Offenses related to operating a vehicle while intoxicated, releasing persons arrested for offenses related to operating a vehicle while intoxicated, granting rule-making authority, and providing a penalty		
<b>Fiscal Effect</b>		
<b>State:</b>		
<input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input checked="" type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
<b>Local:</b>		
<input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate 1. <input checked="" type="checkbox"/> Increase Costs      3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs      4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
<b>Fund Sources Affected</b>		
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		
<b>Affected Ch. 20 Appropriations</b>		
<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
CTS/ Nancy Rottier (608) 267-9733	Nancy Rottier (608) 267-9733	1/20/2012

## Fiscal Estimate Narratives

CTS 1/20/2012

LRB Number	11-2144/2	Introduction Number	AB-0670	Estimate Type	Original
<b>Description</b> Offenses related to operating a vehicle while intoxicated, releasing persons arrested for offenses related to operating a vehicle while intoxicated, granting rule-making authority, and providing a penalty					

### Assumptions Used in Arriving at Fiscal Estimate

Fiscal Estimate for LRB 2144/2

This bill draft changes several aspects of the laws governing operating while under the influence of an intoxicant or other drug (OWI). The changes made by the bill draft would do the following: (1) make first offense OWI a misdemeanor, with the additional requirement that every OWI offender would be required to serve at least the minimum period of time in jail or in prison that the statute specifies as a penalty; (2) authorize the use of sobriety checkpoints; (3) require counties to seek reimbursement of jail costs from those persons confined in the county jail; (4) establish a \$10 million fund to cover increased costs of enforcement of the changed penalties; (5) lower the prohibited alcohol concentration to 0.02 for two years for a person convicted of first or second offense OWI; (6) eliminate delay of incarceration after sentencing unless the courts finds a legal cause or orders probation; and (7) add a criminal penalty for person who accepts legal responsibility for OWI offender and person reoffends, plus require impoundment of vehicle used in OWI violation for a 12-hour period.

The fiscal impact of the various provisions are as follows:

#### (1) First offense OWI as a Misdemeanor

This provision would have the greatest fiscal impact on the court system.

Current violations of the OWI statute, s. 346.63, Wis. Stats., are subject to graduated penalties. First offense is a civil violation, subject to forfeiture. Second through some fourth offenses are unclassified misdemeanors, subject to fines and county jail time. Fourth offense within five years or higher offenses are felonies, subject to fines and prison time. All levels of offense also include revocation of driving privileges.

OWI violations constitute a significant workload for the court system. The more significant the penalty involved in a case, the greater the judicial resources that are required to process a case. A misdemeanor case, for instance, takes significantly greater judicial time and resources than a forfeiture case. A felony takes significantly greater judicial time and resources than a misdemeanor.

To determine the impact on required judicial resources of a change in penalty for first offense OWI, we have relied on the Judicial Needs Assessment 2006, submitted to the Director of State Courts by the National Center for State Courts. For this study, all Wisconsin judges and court commissioners participated in a time study designed to measure the time currently spent processing different types of cases from initial filing to final resolution. Among the case types studied were traffic forfeiture cases and OWI second through fourth cases. Second through fourth offense OWI violation were unclassified misdemeanors at the time of the survey.

According to the study, contested traffic or ordinance cases took 7.5 minutes of judicial time, while OWI second through fourth cases took 47.6 minutes of judicial time.

The study also determined the amount of time available per year for judges and commissioners to hear cases. This judge-year value is 75,096 minutes of case-related time per judge per year.

Because first offense OWI is a civil violation, most (approximately 75%) are currently handled by the municipal courts. Changing first offense OWI to a criminal penalty will require that all OWI violations will be handled by the circuit courts. If this draft bill is adopted, it is assumed first offense OWI cases would be comparable to the current OWI second through fourth offense cases.

For purposes of estimating the number of cases involved in this transfer, we have used Department of

Transportation (DOT) data for the number of OWI convictions, delineated by the number of the offense. For the calendar year 2008, there were 22,426 first offense convictions; for 2009, there were 23,056 first offense convictions; and for 2010, there were 20,464 first offense convictions. The average number of convictions for this three-year period is 21,982. Approximately 25% of the first offense OWI convictions, or 5,496 cases, were handled by the circuit courts. The balance of the first offense cases, 16,486, would be transferred from municipal court to circuit court.

To calculate the additional judicial workload (number of judges) required by these cases, we have used the number of first offense OWI convictions (21,982) times the length of each case (47.6 minutes), then divided it by the number of minutes in a judge-year (75,096). We have then subtracted from that total the first offense OWI cases currently being handled by the circuit courts; that calculation is the number of first offense OWI cases disposed of (5,496) times the length of each case (7.5 minutes), then divided by the number of minutes in a judge-year (75,096). The results of these calculations are as follows:

$21,982 \times 47.6 \div 75,096 = 13.93$  judges

$5,496 \times 7.5 \div 75,096 = .55$  judges

Number of judges needed: 13.38 judges (rounded to 13)

The table that appears at the end of this estimate itemizes the annual costs involved in the creation of 13 new judgeships. The final figures for the fiscal effect include both one-time costs and ongoing costs. Both GPR and PR dollars are involved. The total costs for 13 judgeships:

Total Costs - 3,439,540

One-Time - 344,929

Ongoing - 3,094,611

GPR Costs - 3,114,730

One-Time - 28,119

Ongoing - 3,086,611

PR Costs - 329,810

One-Time - 316,810

Ongoing - 13,000

There would also be a significant fiscal impact for counties. Additional circuit court branches require additional court staff, costs that are borne by the counties. These costs would vary by county.

In addition, there would be increased costs involved for county jails, also paid for by the counties. The mandatory jail provision is also likely to add jail costs for the counties. An accurate estimate of the increased costs is impossible with existing data.

## (2) Sobriety Checkpoints

There is no direct fiscal impact on the courts from the authorization of sobriety checkpoints.

## (3) Required Reimbursement to be Sought

There is no direct fiscal impact on the courts relating to the requirement that reimbursement be sought from jail inmates.

## (4) Intoxicated and Drugged Drivers Fund

There is no direct fiscal impact on the courts relating to the creation of the fund, although the courts would prepare a budget request for an allocation from the fund.

## (5) Lower PAC for First and Second Offenders

It is anticipated that the lower prohibited alcohol concentration (PAC) for first and second offenders would result in additional cases being brought. This provision would subject persons with a PAC greater than 0.02 but less than 0.08 to prosecution; currently those persons would not be subject to prosecution. It is impossible to estimate how many prosecutions would result from this provision.

(6) Eliminate Delay in Incarceration After Sentencing

It is impossible to estimate how many prosecutions might be affected by this provision. There is no data available on the number of convictions resulting in jail vs. the number where probation is ordered. The amount of jail time involved is assumed to be the same as under current law, with only the timing of the jail time changed.

(7) Criminal Penalties for Persons Accepting Legal Responsibility and Impoundment of Vehicle Used in OWI Violation for a 12-Hour Period

This provision is likely to result in additional court proceedings because it creates a new crime. Additional circuit court proceedings require court staff and juror time, costs that are borne by the counties. In addition, there could be increased costs involved for county jails, also paid for by the counties. An accurate estimate of the increased costs is impossible with existing data.

The requirement of the impoundment of a vehicle used in an OWI violation for a 12-hour period would add to local law enforcement costs. It is unlikely to result in increased costs for the court system.

**Long-Range Fiscal Implications**

## Courts' Fiscal Effect of Making 1st Offense OWI a Misdemeanor

### Annual Costs

<u>Circuit Courts (s. 20.625 (1)(a))</u>		<u>13 judgeships</u>
Judge Salary	128,600	
Court Reporter Salary	42,155	
Fringe Benefits	64,000	
Travel	<u>1,900</u>	
	236,655	3,076,515

<u>Wisconsin State Law Library (s. 20.680 (4)(a))</u>		
WI Reports	2,163	28,119
Advance Sheets	110	1,430
Bound Volumes	<u>282</u>	<u>3,666</u>
	2,555	33,215

<u>Consolidated Court Automation System (CCAP) (s. 20.680 (2)(j))</u>		
Equipment	24,370	316,810
Maintenance	<u>1,000</u>	<u>13,000</u>
	25,370	329,810

Total annual costs for 1 judgeship :

	<u>Total Costs</u>	<u>One-Time</u>	<u>Ongoing</u>
GPR	239,210	2,163	237,047
PR	<u>25,370</u>	<u>24,370</u>	<u>1,000</u>
	264,580	26,533	238,047

Total annual costs for 13 judgeships :

	<u>Total Costs</u>	<u>One-Time</u>	<u>Ongoing</u>
GPR	3,114,730	28,119	3,086,611
PR	<u>329,810</u>	<u>316,810</u>	<u>13,000</u>
	3,439,540	344,929	3,094,611