

Fiscal Estimate Narratives

DOC 8/3/2011

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| LRB Number 11-2370/1 | Introduction Number SB-154 | Estimate Type Original |
| Description Penalties for operating-while-intoxicated offenses and providing a penalty. | | |

Assumptions Used in Arriving at Fiscal Estimate

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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 several changes to the penalty provisions associated with OWI convictions as well as arrest and release changes.

Criminal Penalties:

3rd Offense OWI

Currently a misdemeanor; this bill increases the offense to a Class H Felony. Current penalty structures allow a minimum of 45 days and a maximum of 1 year confinement in jail as well as a maximum of 2 years probation. This bill maintains the requirement for a minimum of 45 days confinement, but increases the maximum to 3 years imprisonment with a maximum extended supervision (ES) period of 3 years. The Class H Felony would also make it possible to place an offender on probation for up to 3 years.

4th Offense OWI

Currently a misdemeanor; this bill increases the offense to a Class H Felony. Current penalty structures allow a minimum of 60 days and a maximum of 1 year confinement in jail as well as a maximum of 3 years probation. This bill maintains the requirement for a minimum of 60 days confinement, but increases the maximum to 3 years imprisonment with a maximum ES period of 3 years. The maximum sentence for probation would remain at 3 years.

4th Offense OWI within 5 years

Currently a Class H felony, this bill increases the offense to a Class G Felony. Current penalty structures allow a minimum of 6 months and a maximum of 3 years imprisonment with a maximum ES period of 3 years. This bill maintains the requirement for a minimum of 6 months confinement, but increases the maximum to 5 years imprisonment with a maximum ES period of 5 years. The current Class H Felony penalty structure allows a probation term up to 3 years; this bill increases the probation term to 5 years.

5th and 6th Offense OWI

Currently a Class H felony; this bill increases the offense to a Class G Felony. Current penalty structures allow a minimum of 6 months and a maximum of 3 years confinement and 3 years ES. This bill maintains the requirement for a minimum of 6 months confinement, but increases the maximum to 5 years imprisonment with a maximum ES period of 5 years. The current Class H Felony penalty structure allows a probation term up to 3 years; this bill increases the probation term to 5 years.

7th, 8th and 9th Offense OWI

Currently a Class G Felony; this bill increases the offense to a Class F Felony. Current penalty structures requires a minimum of 3 years initial confinement and a maximum of 5 years imprisonment and 5 years ES. This bill maintains the requirement for a minimum of 3 years confinement, but increases the maximum to 7.5 years imprisonment with a maximum ES period of 5 years. Because there is a minimum confinement time in prison, an offender with a 7th, 8th or 9th offense OWI can not be sentenced to probation.

10th or More Offense OWI

Currently a Class F Felony; this bill increases the offense to a Class E Felony. Current penalty structures requires a minimum of 4 years initial confinement and a maximum of 7.5 years imprisonment and 5 years ES. This bill maintains the requirement for a minimum of 4 years confinement, but increases the maximum to 10 years imprisonment with a maximum ES period of 5 years. Because there is a minimum confinement time in prison, an offender with a 10th offense OWI can not be sentenced to probation.

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 did not take effect until 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 2,477 convictions for 3rd offense OWI, 1,129 convictions for 4th offense OWI, 633 convictions for 5th or 6th offense OWI, 117 convictions for 7th, 8th or 9th offense OWI and 6 convictions for 10th offense OWI or higher.

Under current penalties, the Department of Corrections (DOC) can begin admitting offenders when they have a 2nd offense OWI conviction (probation). First offense OWI convictions that have no extenuating factors (such as causing injury or driving with a child in the vehicle) do not currently place an offender under the control of the Department. During FY10, the Department had 1,196 OWI admissions to community corrections as probationers, and 780 admissions to parole or ES. During the first 10 months of FY11, the Department had 300 admissions to community corrections as 3rd offense OWI probationers (these offenders would not have been eligible for probation in FY10, because 2009 Act 100 was not yet effective). During FY10, the Department also had 911 admissions to prison for OWI.

Sentencing Assumptions:

The following sentencing assumptions are used in the Department's cost estimate:

3rd Offense OWI

25% of the 3rd offense OWI offenders are sentenced to 18 months prison and 3 years extended supervision, and 75% of the 3rd offense OWI offenders are placed on probation for 3 years.

4th Offense OWI

90% of the 4th offense OWI offenders are sentenced to 2 years prison and 3 years extended supervision, and 10% of the 4th offense OWI offenders are placed on probation for 3 years.

5th & 6th Offense OWI

90% of these OWI offenders are sentenced to prison and extended supervision, and 10% of these OWI offenders are placed on probation. For 5th and 6th offense, a 2.5 year prison term with 5 years on ES or a 5 year probation term was used.

7th Offense and greater OWI

For 7th through 9th offense, a 4 year prison term with 5 years on ES and for 10th or more OWI convictions a 6 year prison term with 5 years on ES.

DOC Adult Institutions:

The Department would see an increase to its inmate populations of 1,417 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 4,396 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 \$14.4 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 \$82.6 million per year would be needed once these populations annualize at a permanent increase of 4,396 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 87.00 additional FTE in the first year after enactment and a total of 498.25 additional FTE once the full increase of 4,396 inmates is reached. The new AODA staffing includes:

- . . . 439.50 FTE Social Workers (ratio of one social worker for every ten offenders),
- . . . 44.00 FTE Correctional Program Supervisors, and

. . . 14.75 FTE Treatment Specialists

It is anticipated that the Department would need approximately \$38.6 million annually to run these programs as well as approximately \$2.0 million 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 5 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 15 new facilities would be needed to accommodate the ongoing population increase of 4,396 inmates. Construction of the new 300 bed DACC facility is estimated to be \$13.9 million; construction of 15 similar facilities would cost approximately \$208.5 million.

Using FY10 DACC per inmate annual costs (\$97.58/day), the Department estimates a need for increased operating funding of over \$27.3 million to open 5 new facilities as inmates phase into prison beds during the first year. Increased funding of approximately \$156.6 million annually would be needed to operate 15 new facilities on an ongoing basis.

DOC Community Corrections:

The Department would see an increase of 478 offenders to its Division of Community Corrections (DCC) populations by the end of the first full year after enactment of this legislation. During the first 18 months, all of this population would consist of OWI offenders placed on probation who could also be serving a minimum number of days in the county jail as a condition of supervision.

By the end of the second year of enactment, the Department's DCC populations would have increased by 2,512 additional OWI offenders. During the second year, community populations would include probation offenders and inmates who have been released back into the community on extended supervision (ES). After this proposed legislation has been law for twelve years, the Department anticipates a permanent increase to its community populations of 13,333 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 26.00 additional FTE in the first year of enactment (18.00 FTE Probation and Parole Agents, 2.00 FTE Field Supervisors and 6.00 FTE clerical support positions). Once the full 13,333 additional offenders are reached, DCC would need a total of 437.00 additional FTE (305.00 FTE Probation and Parole Agents, 31.00 FTE Field Supervisors and 101.00 FTE clerical support positions).

If FY10 average costs of a DCC probation/parole offender (\$7.58/day) are used to estimate additional funding needed to provide community supervision for this increased population, the Department would need approximately \$0.7 million for the first 12 months after enactment of this legislation, \$6.3 million for the second 12 months, and \$36.9 million on an annual ongoing basis once the full population increase of 13,333 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 Sobrieters 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 \$1.9 million in the first year after enactment of this legislation and \$7.5 million annually thereafter. An additional 15.60 FTE Monitoring Center staff would be needed in the first 12 months after enactment of this legislation at a cost of approximately \$0.5 million plus \$123,800 in startup costs. On an ongoing basis the Monitoring Center would need 62.00 additional staff at a cost of \$3.4 million.

Local County Jail Costs:

3rd and 4th Offense OWI Confinement Changes -

Currently 3rd Offense OWI offenders have a minimum confinement time of 45 days to a maximum of 1 year in a county jail while 4th Offense OWI offenders have a minimum confinement time of 60 days up to a maximum of 1 year in a county jail.

This legislation increases 3rd Offense OWI to a Class H felony. The bifurcated sentence structure under a Class H felony will require a minimum of 45 days to a maximum of 3 years of confinement and 3 years of extended supervision or a maximum of 3 years probation and a minimum of 45 days in the county jail.

This legislation increases 4th Offense OWI to a Class H felony. The bifurcated sentence structure under this Class H felony will require a minimum of 60 days to a maximum of 3 years of confinement and 3 years of extended supervision or 3 years probation and a minimum of 60 days in the county jail.

The minimum confinement time for 3rd and 4th Offense OWI offenders does not change under this legislation, but the increase to Class H and G felonies could increase county jail confinement time ordered by judges because the maximum confinement time changes. However, it is not possible to predict what the sentencing practices of judges will be in these cases, how much of an increase will occur in the confinement time ordered, and whether the increase will result in more county jail confinement time or a reduction in county jail confinement time when these offenders are now sentenced to prison terms. 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 25% of 3rd Offense, 90% of 4th Offense through 6th Offense, and 100% of 7th Offense or more OWI sentences would be sentenced to prison the estimated increase in operating costs to the Department of Corrections would be between \$169.0 million and \$204.4 million annually.

Additional costs may also be incurred by local county jails as the result of increasing the severity of the penalties related to 3rd Offense or higher 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