

Fiscal Estimate - 2015 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 15-1582/2	Introduction Number AB-0447	
Description Penalties for operating-while-intoxicated offenses and providing a criminal penalty		
Fiscal Effect		
State: <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		
Local: <input type="checkbox"/> No Local Government Costs <input checked="" type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input 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 type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
Fund Sources Affected Affected Ch. 20 Appropriations <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS (1)(a) and (1)(b)		
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Fiscal Estimate Narratives

DOC 11/23/2015

LRB Number	15-1582/2	Introduction Number	AB-0447	Estimate Type	Original
Description Penalties for operating-while-intoxicated offenses and providing a criminal 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.

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 of 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 of 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 term of 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 require a minimum of 3 years initial confinement, if a court imposes a bifurcated sentence, and a maximum of 5 years imprisonment and 5 years ES. This bill maintains the requirement for a presumptive minimum of 3 years confinement, but increases the maximum to 7.5 years imprisonment with a maximum ES period of 5 years.

10th or More Offense OWI

Currently a Class F Felony; this bill increases the offense to a Class E Felony. Current penalty structures require a minimum of 4 years initial confinement, if a court imposes a bifurcated sentence, and a maximum of 7.5 years imprisonment and 5 years ES. This bill maintains the requirement for a presumptive minimum of 4 years confinement, but increases the maximum to 10 years imprisonment with a maximum ES period of 5 years.

Population Estimates:

For purposes of this fiscal estimate the Department of Transportation's (DOT) calendar year (CY) 2013 OWI conviction information is used to estimate additional staffing and funding that would be needed if convictions remained as they were in 2013 under the new penalty structures. In CY2013, there were 2,401 convictions for 3rd offense OWI, 1,039 convictions for 4th offense OWI, 665 convictions for 5th or 6th offense OWI, 145 convictions for 7th, 8th or 9th offense OWI and 9 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 custody of the Department. Under this bill, sentences for OWI 3rd and subsequent offenses would be affected. During FY15, the Department had 1,903 admissions for OWI 3rd and subsequent offenses to community corrections as probationers. During FY15, the Department also had 684 admissions to prison for OWI 3rd and subsequent offenses. The Department excluded these admissions and their estimated costs which are presently incurred by the Department in preparing this estimate.

Sentencing Assumptions:

Difficulty remains in identifying actual sentencing trends in relation to the number of offenses committed by OWI offenders. In addition, it is not known how actual sentencing practices will manifest resulting from this legislation. 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 866 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 4,543 additional inmates. Populations will be fully annualized 16 years after enactment of this bill. These population estimates could be reduced if OWI offenders successfully complete an Earned Release Program (ERP). The sentencing practice of judges cannot be predicted, therefore, it is unknown how many offenders may be sentenced to ERP and 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 \$16.3 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 \$85.3 million per year would be needed once these populations annualize at a permanent increase of 4,543 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 once the full increase of 4,543 inmates is reached. The new AODA staffing includes:

. . . 80.00 FTE Social Workers (ratio of one social worker for every ten offenders),
. . . 4.00 FTE Correctional Program Supervisors, and
. . . 3.00 FTE Treatment Specialists

It is anticipated that the Department would need approximately \$7.6 million annually to run these programs as well as approximately \$395,800 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 - The DOC is struggling to find space for the current inmate population as it is over its budgeted capacity for its facilities. 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 4,543 inmates. Construction of the new 300 bed DACC facility is estimated to be \$13.1 million; construction of 15 similar facilities would cost approximately \$196.5 million.

Using FY15 DACC per inmate annual costs (\$78.41 daily rate), the Department estimates a need for increased operating funding of over \$24.8 million to open 5 new facilities as inmates phase into prison beds during the first year. Increased funding of approximately \$130.2 million annually would be needed to operate 15 new facilities on an ongoing basis.

DOC Community Corrections:

The Department would see an initial decrease of 290 offenders to its Division of Community Corrections (DCC) populations by the end of the first full year after enactment of this legislation. It is anticipated the Department would not be able to reduce costs to an extent commensurate with population decreases, as the decrease in offender populations would be diffused across the entire state among the whole Community Correction's population of 66,799 offenders (as of 10/31/2015). In addition, the population decrease would be temporary.

By the end of the second year of enactment, the Department's DCC populations would have increased by 1,681 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 13,149 OWI offenders. Populations will reach this permanent increase 16 years after enactment of this bill.

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 50.5 additional FTE in the second year of enactment. Once the full 13,149 additional offenders are reached, DCC would need a total of 245.00 additional FTE (161.00 FTE Probation and Parole Agents, 23.00 FTE Field Supervisors, 54.00 FTE clerical support positions, and 7.00 FTE administrative support positions). In addition to these staff positions the Department would require: additional office space, fleet cars, computer equipment, and additional training resources.

If FY15 average costs of a DCC probation/parole offender (\$7.61/day) are used to estimate additional funding needed to provide community supervision for this increased population, the Department would need an additional \$5.0 million for the second 12 months, and \$36.5 million on an annual ongoing basis once the full population increase of 13,149 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. 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 AODA treatment or the type of treatment. 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 Sobriators

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 sobriety are \$2.40/day.

Using the CY2013 DOT conviction numbers, equipment costs are projected to be \$0.27 million in the first year after enactment of this legislation and \$7.7 million annually. An additional 2.00 FTE Monitoring Center staff would be needed in the first 12 months after enactment of this legislation at a cost of approximately \$99,500. On an ongoing basis the Monitoring Center would need 55.00 additional staff at a cost of \$3.0 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 of 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 of 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 CY2013 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 \$136.9 million and \$174.0 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