



Legislative Fiscal Bureau

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February 10, 1998

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 496: Counting OWI Offenses for the Purpose of Calculating Penalties

Assembly Bill 496 was introduced on September 2, 1997, and referred to the Committee on Highways and Transportation. On December 4, the Committee recommended the bill for passage, as amended by Assembly Amendment 1, by a vote of 7-5. On December 23, the bill was referred to the Joint Committee on Finance.

SUMMARY OF BILL

Under current law, the penalties for violating operating while intoxicated (OWI) laws, including the offense of improperly refusing to submit a sample of blood, breath or urine upon request from a law enforcement officer, vary depending upon the number, if any, of prior OWI offenses that a person has committed. For the purposes of counting prior offenses, only offenses within the prior five or ten years are counted. An OWI offense, therefore, stays on a person's driving record for ten years, after which time it no longer is relevant for calculating penalties for subsequent offenses. The five- and ten-year periods, in addition to being used to determine the amount of fines and the terms of imprisonment, are used in determining other sanctions, including license suspension or revocation and vehicle seizure, immobilization or ignition interlock device installation. An attachment to this paper lists the current penalties for violating OWI-related laws.

AB 496 would delete the five-year and ten-year periods for counting the number of prior OWI-related offenses under the following provisions: (a) determining the amount of fines and terms of imprisonment; (b) determining the length of license revocation for refusal to submit to a test and eligibility for an occupational license; and (c) determining whether a vehicle owned

by the driver may be subject to seizure, immobilization or ignition interlock device installation. By deleting the current periods, OWI-related offenses would become a permanent part of a person's driving record. The bill would retain the counting periods for the purpose of determining court-ordered license revocations (AA 1 would delete these counting periods) and for court-ordered seizures following a fourth conviction within a ten-year period.

In addition, the bill would require occupational licenses to restrict the holder to operating only vehicles equipped with an ignition interlock device if the court has ordered that the person's vehicle be equipped with an ignition interlock device. The bill specifies that the person affected would be liable for the costs of equipping the vehicle with the device, although the statutes currently require this.

The bill would first apply to offenses committed on the effective date of the bill, but would not preclude the counting of other violations as prior convictions, suspensions or revocations. DOT's database currently does not contain information on OWI violations before January 1, 1988.

SUMMARY OF ASSEMBLY AMENDMENT 1 TO AB 496

AA 1 to AB 496 would delete the counting periods for the purpose of calculating court-ordered license revocations for OWI convictions (second offense within five years or third or subsequent offense within ten years).

FISCAL EFFECT

AB 496 would increase the percentage of OWI offenders who are charged as repeat offenders, which would have a fiscal impact on the judicial system as well as on DOT. The primary fiscal impact on justice-related agencies would be for the Public Defender. The Public Defender provides representation to indigent persons charged with criminal actions. A first-time OWI offense is not a criminal offense. Therefore, persons charged with a first offense are not eligible for Public Defender representation. Second and subsequent OWI offenses are criminal offenses and, therefore, persons charged with such may be eligible for Public Defender representation. Under AB 496, the number of second offense OWI cases would be expected to increase, because prior offenses would permanently remain on a person's record. Therefore, the number of cases that may be eligible for Public Defender representation would increase. Because Public Defender staff attorneys handle a full statutory caseload, any additional cases would be assigned to private attorneys appointed by the Public Defender.

According to the fiscal estimate submitted by the Public Defender, AB 496 could result in doubling the estimated 2,700 annual OWI cases the agency currently handles. This is based on 1994 information indicating that when the time period for prior convictions counted for third or subsequent OWI convictions was increased from five to 10 years, the number of third or

subsequent OWI cases doubled. An OWI case costs the Public Defender an average of \$346 in private bar expenses. Therefore, if the agency's OWI caseload doubled, private bar costs would increase by \$934,200 annually. The projected increase of 2,700 in the Public Defender's workload represents only the portion of offenders who are indigent, which is estimated at 30%. This implies that the total annual increase in repeat offenders would be 9,000.

The methodology used by the Public Defender may tend to overstate the impact of the bill on caseload by including persons charged with third and subsequent OWI offenses in the base used to calculate the bill's impact. While the bill would result in some offenses moving from second to third (or third to fourth, etc.), these individuals are already eligible for Public Defender representation. This is what happened with the change in the counting period for third and subsequent offenses from five years to ten years.

The number of individuals currently charged with a second OWI offense (about 4,500) is about one-half of those charged with a second or subsequent OWI offense. If this group doubles in size due to the bill, as the Public Defender suggests, the annual increase in costs for the Public Defender would be about \$500,000.

However, this may still overestimate the increase in caseload, since it appears from the data on drunk driving convictions that rates of recidivism go down with time. In other words, if a person who has committed one offense does not commit another offense by the time five years have elapsed, the probability that that person will commit OWI again are lower and continue to decline as time goes on. Although the magnitude of this effect is unknown, this would likely result in an increase in second offenses that is less than those occurring within five years.

Because AB 496 would result in more repeat cases, which involves increased penalties for those cases, the bill would likely result in fewer pleadings and additional trials. This could increase the workload of District Attorneys and the Courts, but this impact is not expected to be significant.

The impact on DOT would result both from an increased workload related to an increase in the number of repeat OWI convictions and from the need to do one-time data processing to modify the driver record file. The penalties for a second or subsequent OWI offense involve license revocation and may involve vehicle seizure, immobilization or ignition interlock device installation, all of which carry additional costs for DOT. DOT indicates that this cost is indeterminate since it is not known how many additional repeat OWI cases will occur. The one-time cost for data processing, however, is expected to be \$64,200. Since the bill does not provide any additional funding for these costs, they would have to be absorbed by the Division of Motor Vehicles.

Prepared by: Jon Dyck and Carri Jakel
Attachment

ATTACHMENT

Current Law Operating While Intoxicated Penalties

<u>Offense</u>	<u>Fine or Forfeiture</u>	<u>Jail Term</u>	<u>License Action</u>	<u>Vehicle Action</u>
OWI, First	\$150-\$300	None	6-9 month suspension	None
OWI, Second (in 5 yrs)	\$300-\$1,000	5 days to 6 months	12-18 month revocation	None
OWI, Third (in 10 yrs)	\$600-\$2,000	30 days to 1 year	2-3 year revocation	Yes*
OWI, Fourth (in 10 yrs)	\$600-\$2,000	60 days to 1 year	2-3 year revocation	Yes*
OWI, Fifth or More (in 10 yrs)	\$600-\$2,000	6 months to 1 year	2-3 year revocation	Yes*
Causing Injury/OWI	\$300-\$2,000	30 days to 1 year	1-2 year revocation	Yes**
Causing Great Bodily Harm/OWI	Up to \$10,000	Up to 5 years	2 year revocation	Yes**
Homicide/OWI	Up to \$10,000	Up to 10 years	5 year revocation	Yes**
Test Refusal, First	None	None	1 year revocation	None
Test Refusal, Second (in 5 yrs)	None	None	2 year revocation	None
Refusal, Third or More (in 10 yrs)	None	None	3 year revocation	Yes*

Note:

All these offenses are counted for the purpose of determining penalties for subsequent offenses. For instance, a chemical test refusal within five years of a previous OWI counts as a second offense.

*Upon a third conviction, the person's vehicle must be immobilized or equipped with an ignition interlock device, or may be seized. Upon a fourth or subsequent offense, the court must order vehicle seizure.

/ harm or death by the intoxicated use of a vehicle may result in vehicle action if it is a nse.

MO# AA1

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
SCHULTZ	Y	N	A
ROSENZWEIG	Y	N	A
GARD	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

AYE 15 NO 0 ABS 1

MO# passage as amended

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
SCHULTZ	Y	N	A
ROSENZWEIG	Y	N	A
GARD	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

AYE 15 NO 0 ABS 1

all amendments rolled into one sub