

Fiscal Estimate Narratives

DOC 4/22/2009

LRB Number	09-1427/1	Introduction Number	AB-0079	Estimate Type	Original
Description Release of persons who commit operating-while-intoxicated offenses and providing penalties					

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 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 structure allows a minimum of 30 days and a maximum of 1 year confinement in jail. This bill increases confinement to a minimum of 90 days to a maximum of 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 G Felony. Current penalty structure allows a minimum of 60 days and a maximum of 1 year confinement in jail; this bill increases confinement to a minimum of 1 year to a maximum of 5 years imprisonment with a maximum ES period of 5 years. The Class G Felony allows a probation term up to 5 years.

5th and 6th Offense OWI

Currently a Class H felony; this bill increases the offense to a Class F Felony. Current penalty structure allows a minimum of 6 months and a maximum of 3 years confinement and 3 years ES. This bill increases confinement to a minimum of 1 year to a maximum of 7.5 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 7.5 years.

7th, 8th and 9th Offense OWI

Currently a Class G Felony; this bill increases the offense to a Class E Felony. Current penalty structure allows a maximum of 5 years imprisonment and 5 years ES; this bill increases the penalty to a maximum of 10 years imprisonment with a maximum ES period of 5 years. The current Class G Felony penalty structure allows a probation term up to 5 years; this bill increases the probation term to 10 years.

10th or More Offense OWI

Currently a Class F Felony; this bill increases the offense to a Class D Felony. Current penalty structure allows a maximum of 7.5 years imprisonment and 5 years ES, this bill increases the penalty to a maximum of 15 years imprisonment with a maximum ES period of 10 years. The current Class F Felony allows a probation term up to 7.5 years; this bill increases the probation term to 15 years.

Population Estimates:

For purposes of this fiscal estimate the Department of Transportation's (DOT) calendar year(CY) 2007 OWI conviction information is used to estimate additional staffing and funding that would be needed if convictions remained as they were in 2007 under the new penalty structures. In CY 2007, there were 4,114 convictions for 3rd offense OWI, 1,902 convictions for 4th offense OWI, 1,179 convictions for 5th or 6th offense OWI, 169 convictions for 7th, 8th or 9th offense OWI and 11 convictions for 10th offense OWI or higher.

Under current penalties, The Department of Corrections (DOC) begins admitting offenders when they reach a 4th Offense OWI conviction (probation). First, second and third offense OWIs alone, do not currently place an offender under the control of the Department. During calendar year 2007 the Department had 548 admissions to community corrections as felony probationers and 487 as misdemeanor probationers. During CY 2007 the Department also had 727 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 three years extended supervision, and 75% of the 3rd offense OWI offenders are placed on probation for three years.

4th Offense OWI

90% of the 4th offense OWI offenders are sentenced to 2 years prison and five years extended supervision, and 10% of the 4th offense OWI offenders are placed on probation for 5 years.

5th Offense and greater 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 3 year prison term with 5 years on ES or a 7.5 year probation term was used. For 7th through 9th offense, a 4 year prison term with 5 years on ES or a 10 year probation term was used and for 10th or more OWI convictions a 6 year prison term with 10 years on ES or a 15 year probation term was used.

DOC Adult Institutions:

The Department would see an increase to its inmate population of 3,236 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 8,424 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 structure.

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 \$32.9 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 \$158.2 million per year would be needed once these populations annualize at a permanent increase of 8,424 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 199.00 additional FTE in the first year after enactment and a total of 954.50 additional FTE once the full increase of 8,424 inmates is reached. The new AODA staffing includes:

- . . . 842.50 FTE Social Workers (ratio of one social worker for every ten offenders),
- . . . 84.00 FTE Correctional Program Supervisors, and
- . . . 28.00 FTE Treatment Specialists

It is anticipated that the Department would need approximately \$72.9 million annually to run these programs as well as approximately \$3.7 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 eleven 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 twenty-eight new facilities would be needed to accommodate the ongoing population increase of 8,424 inmates. Construction of the new 300 bed DACC facility is estimated to be \$11.8 million; construction of twenty-eight similar facilities would cost approximately \$330.4 million.

Using FY08 DACC per inmate annual costs, the Department estimates a need for increased operating funding of over \$59.8 million to open eleven new facilities as inmates phase into prison beds during the first year. Increased funding of approximately \$287.4 million annually would be needed to operate twenty-eight new facilities on an ongoing basis.

DOC Community Corrections:

The Department would see an increase of 2,277 offenders to its Division of Community Corrections (DCC)

population 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 of 60 days to a maximum of one year in the county jail as a condition of supervision.

By the end of the second year of enactment, the Department's DCC population is estimated to increase by 5,688 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 sixteen years, the Department anticipates a permanent increase to its community population of 27,850 OWI offenders.

Community Corrections Staffing/Costs – If it is assumed that these OWI offenders will have similar supervision needs to other community corrections offenders, and you utilize the Department's Case Classification/Staff Deployment calculations to estimate additional staffing needs associated with these increased populations, the Department would need 70.00 additional FTE in the first year of enactment (49.00 FTE Probation and Parole Agents, 5.00 FTE Unit Supervisors and 16.00 FTE clerical support positions). Once the full 27,850 additional offenders are reached, DCC would need a total of 740.00 additional FTE (516.00 FTE Probation and Parole Agents, 52.00 FTE Unit Supervisors and 172.00 FTE clerical support positions).

If FY 08 average costs of a DCC probation/parole offender (\$6.68/day) are used to estimate additional funding needed to provide community supervision for this increased population, the Department would need approximately \$5.5 million for the first 12 months after enactment of this legislation, \$11.3 million for the second 12 months and \$68 million on an annual ongoing basis once the full population increase of 27,850 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. \$24.47/offender (1x per month for 4 months)
- . . . Outpatient treatment – approx. \$133.12/offender (1x per month for 3 months)
- . . . Intensive outpatient treatment – approx. \$632.83/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 \$21,800 per offender

Although it is assumed that 100% 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.

Electronic Monitoring – The Department would utilize electronic monitoring on an estimated 25% of the community OWI offenders for the first 6 months of supervision and place 100% of the community OWI offenders on sobriety and interlock devices for the term of their community supervision. Costs for electronic monitoring are \$0.92/day and \$1.09/day for sobriety. 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. For purposes of this estimate all of the interlock costs are assumed to be paid by the Department.

Using the CY 2007 DOT conviction numbers, equipment costs are projected to be \$1.7 million in the first year after enactment of this legislation and \$13.8 million annually thereafter. An additional 46.75 FTE Monitoring Center staff would be needed in the first 12 months after enactment of this legislation at a cost of approximately \$1.3 million plus \$443,000 in startup costs. On an ongoing basis the Monitoring Center would need 101.00 additional staff at a cost of \$5.5 million.

Local County Jail Costs:

Arrest and Release of Certain OWI Offenders –

This bill requires law enforcement officers to arrest a person and take them into custody if the officer has reasonable grounds to believe that the person is committing a third OWI and allows a circuit court to deny pretrial release for certain felony OWIs if the person has a previous conviction for a felony OWI. This legislation prohibits a person convicted of a third OWI from being released pending sentencing.

The Department is not able to predict how many of these types of arrests would occur or how long individuals would be held before sentencing. It is anticipated that this legislation will result in additional jail

confinement time and increased costs to local county jails for those individuals who previously would have been released with electronic monitoring or some means of surveillance while pending sentencing but now would be held in custody.

3rd and 4th Offense OWI Confinement Changes -

Currently 3rd Offense OWI offenders have a minimum confinement time of 30 days to a maximum of one year in a county jail while 4th Offense OWI offenders have a minimum confinement time of 60 days up to a maximum of one 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 90 days to a maximum of 3 years of confinement and 3 years of extended supervision or a maximum of 3 years probation which could also include 90 days to 1 year in the county jail.

This legislation increases 4th Offense OWI to a Class G felony. The bifurcated sentence structure under this Class G felony will require a minimum of one year to a maximum of 5 years of confinement and 5 years of extended supervision or 5 years probation and a minimum of one year in the county jail.

While the increased minimum confinement time for 3rd and 4th Offense OWI offenders and the increase to Class H and G felonies could increase county jail confinement time ordered by judges, 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 CY2007 DOT conviction data and population assumptions that predict 25% of 3rd Offense and 90% of 4th Offense or more OWI sentences would be sentenced to prison, the estimated increase in operating costs to the Department of Corrections would be between \$318.5 million and \$375 million annually.

Additional costs may also be incurred by local county jails as the result of increased minimum confinement periods and new arrest and release language related to 3rd or higher OWI arrests.

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

Long-Range Fiscal Implications