

Fiscal Estimate Narratives

DOC 3/26/2009

LRB Number	09-1443/1	Introduction Number	SB-066	Estimate Type	Original
Description operation of a motor vehicle while under the influence of an intoxicant and providing a penalty.					

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.

Ignition Interlock Devices -

Current law has provisions for discretionary and mandatory court ordered interlock devices dependent on the number and frequency of OWI offenses. This bill requires the court to order installation of an ignition interlock device if the person has a third OWI conviction within any period or if the person has a second conviction within any period and had an alcohol concentration of 0.16 or greater at the time of the current offense. Offender income determination requirements are included in the bill, allowing the court to reduce fines to offset the costs of installation and maintenance for those offenders who have incomes less than the limit for the Wisconsin Works Program. The bill prohibits companies that equip ignition interlock devices on court ordered vehicles from removing the device during the period that the court ordered without the court's permission. The bill appears to place responsibility for the costs of these devices on the OWI offender so there does not appear to be a fiscal impact to the Department or to local county jails for this portion of the bill.

Winnebago County OWI Pilot Program -

State statutes currently authorize an OWI program in Winnebago County for 2nd and 3rd offense OWI offenders that includes reduced minimum periods of imprisonment as the result of successful completion of a county probation that includes alcohol and other drug assessment and treatment, community service, use of an ignition interlock device, participation with the Drunk Driving Victim Impact Panel and monthly reporting. Participation in this program is limited to only once in an offender's lifetime. This bill authorizes similar programs in any county throughout the state.

This type of program could provide cost avoidance to the Department if 3rd OWI offenders are referred to one of these county programs rather than being placed on state probation or sentenced to prison. Local county jails could also experience savings as the result of reduced jail bed days for those offenders that successfully complete these programs. It is not possible to predict, however, how many counties would implement a program similar to Winnebago County's, the number of offenders who would be referred to these programs, what sentence lengths would be attached to the referred offenders or if this program would be used in lieu of state probation or prison sentences. It is, therefore, not possible to calculate a specific fiscal impact to either the Department or local county jails on this portion of the bill.

Local County Jail Costs –

Currently 3rd Offense OWI offenders have a minimum confinement time of 30 days while 4th Offense OWI offenders have a minimum confinement time of 60 days.

This legislation increases minimum confinement from 30 days to 60 days for 3rd Offense OWI offenders if the 3rd offense occurred within five years of a prior OWI. Additionally these 3rd and all 4th Offense OWI offenders will be charged as Class I felonies. The bifurcated sentence structure under a Class I felony will require a minimum of 60 days to a maximum of 1.5 years of confinement and 2 years of extended supervision or 3 years probation and a minimum of 60 days to a maximum of 1 year in the county jail.

While the increased minimum confinement time for certain 3rd Offense OWI offenders 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 county jail confinement time or what the increased costs to local county jails will be. Some of the increased confinement time allowed under this legislation may be offset by the statewide authorization for programs similar to the Winnebago County Pilot. It is unknown, however, how many counties would implement these programs, how many offenders would be referred and successfully complete the programs and what the resulting cost reductions would be.

Criminal Penalties -

The penalty for a 3rd offense OWI is increased in this bill to a Class I felony if the 3rd offense occurs within 5 years of a prior OWI conviction. The minimum term of confinement is increased from 30 days to 60 days for these offenders. Under this bill a 4th offense OWI is increased to a Class I felony with a minimum term of confinement of 60 days (the same as current law). A Class I felony is punishable with a maximum bifurcated sentence of 3.5 years (1.5 years confinement and 2 years extended supervision), a maximum fine of \$10,000 and a maximum probation term of 3 years.

Population Estimates -

It is not possible to predict how many 3rd and 4th offense OWI convictions will occur in the future. According to the Department of Transportation, in CY 2007 Wisconsin convicted 1,300 new 3rd Offense OWI offenders (whose 3rd OWI occurred within 5 years of a prior OWI) and 1,902 new 4th Offense OWI offenders.

For purposes of this fiscal estimate DOT's CY2007 OWI conviction information was used to provide estimates of staffing and costs if convictions remained as they were in 2007. The following additional assumptions were used in further breaking down these populations:

3rd Offense OWI within 5 years of previous OWI conviction

- 25% of the 3rd offense OWI offenders are sentenced to a 12 month prison sentence and two years extended supervision, and
- 75% of the 3rd offense OWI offenders are placed on probation for three years

4th Offense OWI Convictions

- 50% of the 4th offense OWI offenders are sentenced to a 15 month prison sentence and two years extended supervision, and
- 50% of the 4th offense OWI offenders are placed on probation for three years

Adult Institutions - The Department would see an increase to its inmate populations of 1,276 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 1,514 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 \$12.9 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 \$28.4 million per year would be needed once these populations annualize at a permanent increase of 1,514 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 144.00 additional FTE in the first year after enactment and a total of 172.00 additional FTE once the full increase of 1,514 inmates is reached. The new AODA staffing includes:

- 151.50 FTE Social Workers (staffing ratios of one social worker/every ten offenders),
- 15.00 FTE Correctional Program Supervisors, and
- 5.00 FTE Treatment Specialists

It is anticipated that the Department would need approximately \$13.1 million annually to run these programs as well as approximately \$600,000 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 four 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 five new facilities would be needed to accommodate the ongoing population increase of 1,514 inmates. Construction of the new 300 bed DACC facility is estimated to be \$11.8 million; construction of five similar facilities would cost approximately \$59 million.

Using FY08 DACC per inmate annual costs, the Department estimates a need for increased operating

funding of over \$23.5 million to open four new facilities as inmates phase into these facilities during the first year. Increased funding of over \$51.6million would be needed to operate five new facilities on annual ongoing basis.

Community Corrections Populations - The Department would see an increase of 975 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 year all of this population would be made up of OWI offenders placed on probation who would also be serving a minimum of 60 days and a maximum of one year in the county jail.

By the end of the second year of enactment, the Department's DCC populations would have increased by 2,988 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 enacted for three years the Department anticipates a permanent increase to its community populations of 5,477 OWI offenders.

Community Corrections Staffing/Costs – If you assume 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 29.50 additional FTE in the first year of enactment (20.50 FTE Probation and Parole Agents, 2.00 FTE Unit Supervisors and 7.00 clerical support positions). Once the full 5,477 additional offenders are reached, DCC would need a total of 144.50 additional FTE (101.00 FTE Probation and Parole Agents, 10.00 FTE Unit Supervisors and 33.50 clerical support positions).

If FY08 average costs of a DCC probation/parole offender (\$6.68/day) is used to estimate additional funding needed to provide community supervision for this increased population, the Department would need approximately \$1.3million for the first 12 months after enactment of this legislation, \$5.5million for the second 12 months and \$13.3million on an annual ongoing basis once the full population increase of 5,477 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 - approximately \$24.47/offender (1x/month for 4 months)
- Outpatient treatment – approximately \$133.12/offender (1x/month for 3 months)
- Intensive outpatient treatment – approximately \$632.83/offender (4x/week for 3 months)
- Inpatient Treatment – approximately \$120/day/offender
 - o 90 day (3 mo) program totals \$10,800/offender
 - o 120 day (4 mo) program totals \$14,400/offender
 - o 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 for the term of their community supervision. Daily costs for electronic monitoring are \$0.92/day and \$1.09/day for sobriety. Using the CY2007 DOT conviction numbers, equipment costs are projected to be \$235,000 in the first year after enactment of this legislation and \$542,000 annually thereafter. An additional 6.25 FTE Monitoring Center staff would be needed in the first 12 months after enactment of this legislation at a cost of approximately \$296,400 plus \$113,700 in startup costs. On an ongoing basis the Monitoring Center would need 15.50 additional staff at a cost of \$864,800.

SUMMARY: Using CY2007 DOT conviction data and population assumptions that estimate 25% of 3rd Offense and 50% of 4th Offense OWI sentences will be sentenced to prison, it is estimated that there will be increased annual costs to DOC from \$56 million to \$66.4 million. Additional costs may also be incurred by local county jails as the result of increased minimum confinement periods.

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