

Fiscal Estimate Narratives

DOC 5/14/2013

LRB Number	13-0729/1	Introduction Number	AB-0069	Estimate Type	Original
Description Requiring a mandatory minimum sentence for causing bodily harm to another while driving while intoxicated 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.

Criminal Penalties:

Cause an OWI related injury, 1st offense:

Under current law, the penalty for this offense is imprisonment for not less than 30 days (presumptive minimum) or more than 1 year in the county jail. The offender may also be placed on probation for a period of 2 years. This bill would require a mandatory minimum period of jail time of 6 months but not more than 1 year if the violation results in bodily harm. No change would be made to potential periods of probation for these offenders.

Under the bill, if the violation resulted in substantial bodily harm, the offender would be guilty of a Class H felony, subject to a mandatory bifurcated sentence, with minimum confinement time in prison not less than 2 years. Under this bill, there would be a maximum confinement time of 3 years in prison and 3 years on Extended Supervision (ES) for this offense.

Cause an OWI related injury, with a previous OWI related conviction, suspension, or revocation:

Under current law, a person convicted of this offense is guilty of a Class H felony. Current penalty structure allows a maximum of 3 years confinement and 3 years of ES. The current penalty allows for a probation term of up to 3 years. This bill would maintain this offense as a Class H felony, and require a mandatory bifurcated sentence with the confinement portion of the sentence not less than 1 year if the violation resulted in bodily harm.

Under the bill, if the violation resulted in substantial bodily harm, the offender would be guilty of a Class H felony, subject to a mandatory bifurcated sentence, with minimum confinement time in prison not less than 3 years.

Cause an OWI related injury with a minor passenger in the offender's vehicle:

Under current law, the above mentioned applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled if there was a minor passenger in the offender's vehicle under 16 years of age at the time of the violation. This bill eliminates this doubling provision.

Injury by intoxicated use of a vehicle, cause great bodily harm:

Under current law, this offense is a Class F felony. Current penalty structure allows a maximum of 7.5 years confinement and 5 years of ES. The current penalty allows for a probation term of up to 7.5 years. This bill would maintain this offense as a Class F felony, and require a mandatory bifurcated sentence with the confinement portion of the sentence not less than 3 years.

Shorter jail sentence with successful completion of probation with treatment:

Under current law, a first time offender causing bodily harm may receive a shorter jail sentence if a period of probation including alcohol or counseling is successfully completed. This bill eliminates this option for these offenders.

Population Estimates:

For purposes of this fiscal estimate, DOC admissions data related to OWI convictions occurring in CY2011 is used to estimate additional staffing and funding that would be needed if convictions and admissions to DOC remained as they were at that time.

Under current penalty structures for these offenses, from this data-set, 159 offenders were placed on probation resulting from these offenses, while 104 offenders were admitted to prison. It is not known how many of the offenders placed on probation were ordered to serve time in jail as a condition of probation.

Sentencing Assumptions:

Due to limited abilities to determine the extent of bodily harm upon victims in the existing data set, it is difficult to estimate the numbers of offenders who may be applicable to the various minimum terms of confinement under this bill. The Department assumed 100% of the 159 offenders placed on probation would instead be admitted to prison on an annual basis, on average, for a period of 2.5 years, with average ES time of 1.5 years. The confinement portion assumed is intended to be an average estimate of mandatory minimum confinement times to which offenders may be subject to, on an average basis.

DOC Adult Institutions:

The Department would see an increase to its inmate population of 159 by the end of the first full year after enactment of this legislation. Once the populations are fully annualized, the Department would see a permanent increase to current population levels of 413 additional inmates.

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 \$1.6 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 \$7.7 million per year would be needed once these populations fully increase to 413 additional inmates.

The new 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 18.10 additional FTE once the full increase is reached. The new AODA staffing includes:

- ... 16.00 FTE Social Workers
- ... 1.60 FTE Correctional Program Supervisors
- ... 0.50 FTE Treatment Specialists

It is anticipated \$1.3 million annually to run these programs as well as approximately \$76,000 in startup costs. These costs do not include remodeling/construction costs that may be needed to create the kind of program spaces that are needed.

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 a model for these new facilities. The Department would need to construct one new facility to accommodate this number of inmates. Construction of a new 300 bed DACC facility would be estimated to be \$11.8 million. This cost excludes land acquisition.

Using FY12 DACC per inmate annual costs, the Department estimates a need for increased operating funds of over \$14.5 million annually to operate the new facility on an on-going basis.

Although offenders no longer receiving probation are anticipated to instead be placed into prison, increasing costs, one might anticipate the repeal of the doubling provisions for offenders committing violations with minors in the vehicle at the time of the violation would offset some prison costs. Using the same data-set referenced above, 1 offender was admitted to prison in relation to these offenses with an indication a minor was in the vehicle at the time, while 7 offenders with the same identifier were placed on probation. While there may be additional offenders meeting this criteria who were not able to be identified with current database limitations, the repeal of this provision isn't anticipated to yield a significant cost decrease.

DOC Community Corrections:

This bill, over the short term, likely would decrease costs in Community Corrections as offenders typically placed on probation would instead be subject to minimum periods of confinement time. 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. Over the long term (2.5 to 6 years) it is anticipated these populations would return to community supervision as they become released from prison and begin terms ES. The lengths of ES terms for these offenders are not assumed to differ significantly compared to current periods of probation ordered by the courts. As a result, no change in long-term Community Corrections costs are anticipated from this bill.

Local County Jail Costs:

Under current law, 100% of violations in relation to causing an OWI related injury, 1st offense, are considered misdemeanors, except violations causing great bodily harm or in which there was a minor in the vehicle at the time of the violation. Under this bill, it would be an OWI related injury causing substantial harm as a first offense would be considered a felony. This provision could lead to additional offenders placed in prison as opposed to county jail. Potential costs from these additional offenders are not factored into the above cost estimates.

While costs may decrease related to those offenders for county jails, costs may also increase for county jails due to the mandatory minimum jail time provisions in this bill. Instead of a presumptive minimum of 60 days for a 1st offense causing an OWI related injury, there would be a mandatory minimum of 6 months jail time. The average FY12 annual cost to jail inmates was \$18,800. A local cost impact may not be determined for this bill.

SUMMARY:

The estimated increase in state operating costs for the Department of Corrections in relation to this bill are estimated to be between \$9 million and \$14.5 million annually.

A local cost impact for county jails may not be determined.

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