

Fiscal Estimate Narratives

DOC 5/14/2013

LRB Number	13-0731/2	Introduction Number	AB-0071	Estimate Type	Original
Description Penalties for operating-while-intoxicated offenses and providing a 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) 2011 OWI conviction information is used to estimate additional staffing and funding that would be needed if convictions remained as they were in 2011 under the new penalty structures. In CY2011, there were 2,733 convictions for 3rd offense OWI, 1,171 convictions for 4th offense OWI, 753 convictions for 5th or 6th offense OWI, 133 convictions for 7th, 8th or 9th offense OWI and 12 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. During FY12, the Department had 2,176 OWI admissions to community corrections as probationers, and 761 admissions to parole or ES. During FY12, the Department also had 853 admissions to prison for OWI. 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 925 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 4,969 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 \$17.3 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 \$93.3 million per year would be needed once these populations annualize at a permanent increase of 4,969 inmates. This number of contract beds isn't anticipated to be fully available from county jails.

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 193.50 additional FTE once the full increase of 4,969 inmates is reached. The new AODA staffing includes:

- . . . 170.50 FTE Social Workers (ratio of one social worker for every ten offenders),
- . . . 17.00 FTE Correctional Program Supervisors, and
- . . . 6.00 FTE Treatment Specialists

It is anticipated that the Department would need approximately \$14.2 million annually to run these programs as well as approximately \$0.8 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 6 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 17 new facilities would be needed to accommodate the ongoing population increase of 4,969 inmates. Construction of the new 300 bed DACC facility is estimated to be \$13.9 million; construction of 17 similar facilities would cost approximately \$236.3 million.

Using FY12 DACC per inmate annual costs (\$96.72/day), the Department estimates a need for increased operating funding of over \$32.6 million to open 6 new facilities as inmates phase into prison beds during the first year. Increased funding of approximately \$175.4 million annually would be needed to operate 17 new facilities on an ongoing basis.

DOC Community Corrections:

The Department would see an increase of 66 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 18 months, all of this population would consist of OWI offenders placed on probation who could also be serving a minimum number of days in the county jail as a condition of supervision.

By the end of the second year of enactment, the Department's DCC populations would have increased by 2,308 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 14,611 OWI offenders.

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 2.75 additional FTE in the first year of enactment. Once the full 14,611 additional offenders are reached, DCC would need a total of 225.00 additional FTE (157.00 FTE Probation and Parole Agents, 15.75 FTE Field Supervisors and 52.25 FTE clerical support positions).

If FY12 average costs of a DCC probation/parole offender (\$7.95/day) are used to estimate additional funding needed to provide community supervision for this increased population, the Department would need approximately \$0.1 million for the first 12 months after enactment of this legislation, \$6.6 million for the second 12 months, and \$42.4 million on an annual ongoing basis once the full population increase of 14,611 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 Sobrieters 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 sobrieters are \$2.40/day.

Using the CY2011 DOT conviction numbers, equipment costs are projected to be \$290,000 in the first year after enactment of this legislation and \$8.2 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 \$98,400. On an ongoing basis the Monitoring Center would need 60.00 additional staff at a cost of \$3.2 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 CY2011 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 \$158.2 million and \$226.0 million annually. Construction of 17 new 300 bed facilities similar to DACC would cost approximately \$236.3 million, excluding land acquisition costs.

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 penalty structures and the number of offenders who violate these specific offenses.

Long-Range Fiscal Implications