

Fiscal Estimate - 2015 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 15-1581/1	Introduction Number AB-0353
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Description
 Requiring a mandatory minimum sentence for causing bodily harm to another while driving while intoxicated and providing a penalty

Fiscal Effect

State:

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Increase Existing Appropriations	<input type="checkbox"/> Decrease Existing Appropriations	<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Create New Appropriations		

Local:

<input type="checkbox"/> No Local Government Costs	3. <input type="checkbox"/> Increase Revenue	5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenue	
1. <input checked="" type="checkbox"/> Increase Costs	<input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory	
<input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected	Affected Ch. 20 Appropriations
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 1a & 1b	

Agency/Prepared By DOC/ Emily Lindsey (608) 240-5413	Authorized Signature Jeffrey Grothman (608) 240-5056	Date 10/23/2015
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Fiscal Estimate Narratives

DOC 10/23/2015

LRB Number	15-1581/1	Introduction Number	AB-0353	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, no person may cause injury to another person by the operation of a vehicle while under the influence of an intoxicant, a controlled substance, or a controlled substance analog or any combination thereof, with a prohibited alcohol concentration, or with a detectable amount of a restricted controlled substance in his or her blood (OWI-related injury). A person who does so is generally subject to a fine of not less than \$300 nor more than \$2,000, imprisonment for not less than 30 days nor more than one year in the county jail, or both.

Under current law, if a person causes an OWI-related injury with a minor passenger in his or her vehicle, the person is guilty of a felony and the applicable fine and jail sentence are doubled. Current law offers a first offender an opportunity to receive a shorter jail sentence if he or she completes a period of probation that includes successful completion of alcohol or drug counseling.

Under current law, if the person has committed a prior OWI-related offense, causing an OWI-related injury is a Class H felony, and the person may be fined up to \$10,000, imprisoned for up to six years, or both. Current law doubles the applicable maximum fine and term of imprisonment for these offenses if the person has a passenger who is under the age 16 in his or her vehicle at the time of the offense. If a person causes an OWI-related injury that results in great bodily harm to another person or to an unborn child, the person is guilty of a Class F felony, and may be fined up to \$25,000, imprisoned for 12 years and six months, or both.

Current law requires a person who is sentenced to prison for a felony to serve a bifurcated sentence, with a portion of the term of imprisonment to be served confined in prison, and the remainder to be served under supervision in the community.

Under this bill, if a person causes an OWI-related injury and the injured person suffers bodily harm, the offender who caused the OWI-related injury must serve at least 30 days in jail. If the injured person suffers substantial bodily harm, the offender is guilty of a Class H felony and must serve at least two years confined in prison, and if the injured person suffers great bodily harm, the offender is guilty of a Class F felony and must serve at least three years confined in prison.

Under the bill, a person with a prior OWI-related offense is guilty of a Class H felony and must serve a minimum of one year confined in prison if the OWI-related injury causes bodily harm, and a minimum of three years confined in prison if the OWI-related injury causes substantial bodily harm.

Under the bill, if the injured party was a passenger in the person's car, a court may sentence the person to less than the minimum if the court finds that the best interests of the community will be served and that the public will not be harmed. If the court sentences a person to less than the minimum, the bill requires the court to put its findings in writing. The bill eliminates the doubling provisions for causing an OWI-related injury that results in bodily harm or substantial bodily harm and eliminates the opportunity for a reduced sentence in exchange for completing a period of probation that includes drug or alcohol treatment.

Population Estimates:

For purposes of this fiscal estimate, DOC used admissions data related to OWI convictions occurring in FY2015.

Under current penalty structures for these offenses, from this FY2015 data-set, 93 offenders were placed on probation resulting from these offenses, while 22 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 93 offenders placed on probation would instead be admitted to prison on an annual basis, on average, for a period of 1.8 years. The confinement portion assumed is intended to be an estimated average of mandatory minimum confinement times to which offenders may be subject to. Although offenders no longer receiving probation are anticipated to instead be placed into prison, increasing costs, it is anticipated that 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, but there is no data available to estimate what fiscal impact this might have.

DOC Adult Institutions:

The Department would see an increase to its inmate population of approximately 93 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 190 additional inmates.

The average FY14 annual cost for an inmate in a DOC institution is approximately \$32,800. However, when there is excess capacity in DOC facilities, the incremental costs (i.e. food, health care and clothing) of housing a small number of inmates is approximately \$5,700 based on FY14 costs.

The new offenders would also 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 5.5 additional FTE once the full increase is reached. The new AODA staffing includes:

- ...5.5 FTE Treatment Specialists
- ...0.5 FTE Correctional Program Supervisors

It is anticipated \$469,800 annually would be needed to run these programs as well as approximately \$88,000 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 – The DOC is struggling to find space for the current inmate population as it is over its budgeted capacity for its facilities. 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 \$13.1 million.

Using FY15 DACC per inmate annual costs, the Department estimates a need for increased operating funds of over \$6,645,300 annually to operate the new facility on an on-going basis. Additional staff would also be necessary for a new facility.

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 \$728,500 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 \$3,568,800 per year would be needed once these populations fully increase to 190 additional inmates.

DOC Community Corrections:

This bill, over the short term, may 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 (estimated to be 93 offenders in the first year), as the decrease in offender populations would be diffused across the entire state among the whole Community Correction's population of 66,840 offenders (as of 9/30/2015).

Over the long term it is anticipated any offenders incarcerated under this proposed legislation would return to community supervision as they are released from prison. As a result, no change in long-term Community Corrections costs is 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, 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. No data exists to estimate how this provision might lead to increased state costs; as a result, 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. The average FY15 annual cost to jail inmates was \$18,800. A local cost impact cannot be determined for this bill.

SUMMARY:

The estimated increase in state operating costs for the Department of Corrections in relation to this bill is between \$4,126,600 and \$6,645,300 annually.

The local fiscal impact of the bill cannot be predicted because the Department of Corrections cannot predict the number of people that will be sentenced and the sentencing practices of judges under the new law. Costs at the local level may increase if offenders are placed in jail rather than prison.

Long-Range Fiscal Implications