

### Fiscal Estimate - 2015 Session

Original     
  Updated     
  Corrected     
  Supplemental

LRB Number <b>15-3701/2</b>	Introduction Number <b>SB-455</b>
-----------------------------	-----------------------------------

**Description**  
 Penalties for, and elements of, certain operating-while-intoxicated offenses and providing a criminal 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 checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Increase Existing Appropriations	<input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriations		

**Local:**

<input type="checkbox"/> No Local Government Costs	<b>5. Types of Local Government Units Affected</b>	
<input checked="" type="checkbox"/> Indeterminate		
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	<input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Counties <input type="checkbox"/> Others
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

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

<b>Agency/Prepared By</b> DOC/ Emily Lindsey (608) 240-5413	<b>Authorized Signature</b> Jeffrey Grothman (608) 240-5056	<b>Date</b> 12/17/2015
--	--	---------------------------

## Fiscal Estimate Narratives

DOC 12/17/2015

LRB Number	15-3701/2	Introduction Number	SB-455	Estimate Type	Original
<b>Description</b> Penalties for, and elements of, certain operating-while-intoxicated offenses and providing a criminal penalty					

### Assumptions Used in Arriving at Fiscal Estimate

#### 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:

##### 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 extended supervision (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 eliminates this offense. All OWI 4th offenses will receive the same penalty regardless of when they are committed in relation to the offender's OWI 3rd offense.

##### 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) 2013 OWI conviction information is used to estimate additional staffing and funding that would be needed if convictions remained as they were in 2013 under the new penalty structures. In CY2013, there were 1,039 convictions for 4th offense OWI, 665 convictions for 5th or 6th offense OWI, 145 convictions for 7th, 8th or 9th offense OWI and 9 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. Under this bill, sentences for OWI 4th and more serious offenses would be affected. During FY15, the Department had 1,152 admissions for OWI 4th and more serious offenses to community corrections as probationers. During FY15, the Department also had 656 admissions to prison for OWI 4th and more serious offenses. The Department did not include current inmate and offender populations in preparing this estimate because the department's budget currently provides for their incarceration/supervision costs.

#### Sentencing Assumptions:

It remains difficult to identify 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:

#### 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's Division of Adult Institutions (DAI) would see an increase to its inmate populations of 1,018 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 3,663 additional inmates. Populations will be fully annualized 12 years after enactment of this bill. These population estimates could be reduced if OWI offenders successfully complete an Earned Release Program (ERP). The sentencing practice of judges cannot be predicted, therefore, it is unknown how many offenders may be sentenced to ERP and 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 \$10.5 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 \$68.8 million per year would be needed once these populations annualize at a permanent increase of 3,663 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 57.00 additional FTE once the full increase of 3,663 inmates is reached. The new AODA staffing includes:

- . . . 52.00 FTE Social Workers (ratio of one social worker for every ten offenders),
- . . . 3.00 FTE Correctional Program Supervisors, and
- . . . 2.00 FTE Treatment Specialists

It is anticipated that the Department would need approximately \$4.9 million annually to run these programs as well as approximately \$250,100 in start-up costs. These costs do not include remodeling/construction that may be needed to create the kind of program spaces that are needed for AODA programming.

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 the model for these new facilities. The Department would need to construct 3 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 12 new facilities would be needed to accommodate the ongoing population increase of 3,663 inmates. Construction of the new 300 bed DACC facility is estimated to be \$13.1 million; construction of 12 similar facilities would cost approximately \$157.2 million.

Using FY15 DACC per inmate annual costs (\$78.41 daily rate), the Department estimates a need for increased operating funding of over \$16.0 million to open 3 new facilities as inmates phase into prison beds during the first year. Increased funding of approximately \$104.8 million annually would be needed to operate 12 new facilities on an ongoing basis.

#### DOC Community Corrections:

The Department may see an initial decrease of offenders to its Division of Community Corrections (DCC) populations after enactment of this legislation. 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 among the whole Community Correction's population of 66,799 offenders (as of 10/31/2015). Any cost reduction created by a temporary decrease of offenders in DCC would be needed by the DOC to cover new costs created by the predicted population increase in DAI. In addition, the population decrease would be temporary.

By the end of the fourth year of enactment, the Department's DCC populations would have increased by 1,093 additional OWI offenders. After this proposed legislation has been law for twelve years, the Department anticipates a permanent increase to its community populations of 6,547 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 15.00 additional FTE in the fourth year of enactment. Once the full 6,547 additional offenders are reached, DCC would need a total of 82.00 additional FTE (54.00 FTE Probation and Parole Agents, 8.00 FTE Field Supervisors, 19.00 FTE clerical support positions, and 1.0 FTE administrative support position). In addition to these staff positions the Department would require: additional office space, fleet cars, computer equipment, and additional training resources.

If FY15 average costs of a DCC probation/parole offender (\$7.61/day) are used to estimate additional funding needed to provide community supervision for this increased population, the Department would need an additional \$18.2 million on an annual ongoing basis once the full population increase of 6,547 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 CY2013 DOT conviction numbers, equipment costs are projected to be \$6.0 million annually, once the population increases to 6,547 offenders. Once populations are annualized, the Monitoring Center would need 42.00 additional staff at a cost of \$2.7 million.

#### Local County Jail Costs:

##### 4th Offense OWI Confinement Changes -

Currently 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 4th Offense OWI to a Class H felony. This bill also removes the penalty enhancer for 4th Offense OWI within 5 years, all 4th OWI offenses are subject to the same penalty. 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 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 CY2013 DOT conviction data combined with population assumptions that predict 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 (excluding possible construction costs) to the Department of Corrections would be between \$97.9 million and \$129.0 million annually.

Additional costs may also be incurred by local county jails as the result of increasing the severity of the penalties related to 4th Offense or higher OWI arrests.

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**