

### Fiscal Estimate - 2017 Session

Original     
  Updated     
  Corrected     
  Supplemental

LRB Number <b>17-1384/1</b>	Introduction Number <b>AB-0099</b>
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**Description**  
 committing a fifth or sixth offense related to operating a vehicle while intoxicated and providing a criminal penalty

**Fiscal Effect**

**State:**

No State Fiscal Effect  
 Indeterminate

<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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**Local:**

No Local Government Costs  
 Indeterminate

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<b>5. Types of Local Government Units Affected</b> <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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<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> Donald Friske (608) 240-5056	<b>Date</b> 3/31/2017
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## Fiscal Estimate Narratives

DOC 3/31/2017

LRB Number	17-1384/1	Introduction Number	AB-0099	Estimate Type	Original
<b>Description</b> committing a fifth or sixth offense related to operating a vehicle while intoxicated and providing a criminal penalty					

### Assumptions Used in Arriving at Fiscal Estimate

This bill imposes a mandatory minimum period of confinement in prison for fifth and sixth offenses of operating a motor vehicle while intoxicated (OWI).

Under current law, it is an OWI offense to operate a motor vehicle while under the influence of an intoxicant, a controlled substance, a controlled substance analog, or any combination thereof, under the influence of any substance to a degree that renders him or her incapable of safely driving, with a detectable amount of a restricted controlled substance in his or her blood, or with a prohibited alcohol concentration. Under current law, a person who commits a fifth or sixth OWI offense is guilty of a Class G felony and may be fined up to \$25,000, imprisoned for up to ten years, or both. Under current law, a person who commits a fifth or sixth OWI offense must be fined at least \$600 and imprisoned for at least six months.

Under this bill, for a fifth or sixth OWI offense, a sentencing court is required to impose a sentence that orders the person to spend at least 18 months confined in prison.

#### Population Estimates:

For purposes of this fiscal estimate, DOC used admissions data related to OWI 5th and 6th convictions occurring in FY2014-FY2016. It should be noted that the current felony class for OWI 5th and 6th and penalty structure went into place on January 1, 2017 pursuant to 2015 Act 371. Due to the short amount of time that Act 371 has been law, data does not include persons sentenced under Act 371.

Under current penalty structures for these offenses, from this FY2014-FY2016 data-set, on average 478 offenders per year were placed on probation resulting from these offenses; it is not known how many of the offenders placed on probation were ordered to serve time in jail as a condition of probation. Under current penalty structures for these offenses, from this FY2014-FY2016 data-set, on average 435 offenders were admitted to prison per year.

#### Sentencing Assumptions:

The Department assumed 100% of the 478 offenders currently sentenced to probation per year would be admitted to prison on an annual basis for the required 18-month minimum. The 435 individuals sentenced to prison under current penalty structures are each sentenced to prison for approximately 19 months. Because this exceeds the mandatory minimum created by this bill, the Department assumes the fiscal impact would result from only those individuals currently sentenced to probation being sentenced to prison for 18 months.

Based on an analysis of Department of Transportation (DOT) OWI conviction data from CY2011-2015, the conviction rate of 5th and 6th OWI offenses has been declining approximately 3% each year. This 3% decline is taken into account in this fiscal estimate. As a result, the department assumes 40 admissions per month in the first year and 39 admissions per month in the second year.

#### DOC Adult Institutions:

The Department estimates an increase to its inmate population of approximately 478 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 710 additional inmates.

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

- ... 24.00 FTE Treatment Specialists
- ... 1.60 FTE Correctional Program Supervisors

It is anticipated \$1,970,400 annually would be needed to run these programs as well as approximately \$117,000 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.

The average FY16 annual cost for an inmate in a DOC institution is approximately \$32,300. 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 FY16 costs. DOC DAI facilities are at capacity and the Department is utilizing contract beds space in county jails. As of March 17, 2017, 206 county contract beds are being utilized to house DOC inmates. For purposes of this fiscal estimate, it is assumed that contract beds would be utilized to house the anticipated population.

#### 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 \$4,863,200 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 \$13,332,700 per year would be needed once these populations fully increase to 710 additional inmates.

#### DOC Community Corrections:

It is not anticipated that this bill would have an effect on costs in Community Corrections. 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 after 18 months. There may be a drop in Community Corrections' population during the first 18 months of the bill, but that population would return as individuals are released to extended supervision. The bill does not call for any minimum time on extended supervision and extended supervision sentences already exist. Current probation sentences are approximately 36 months of community supervision. Individuals being sentenced to prison have approximately 32 months of extended supervision, after serving their confinement time portion of their sentence. Considering that data, it is assumed this bill would not result in any change to extended supervision sentences, therefore an assumption is made that there will be no change to the time offenders are sentenced to community supervision. As a result, no change in long-term Community Corrections costs is anticipated from this bill.

#### Local County Jail Costs:

This bill sets a mandatory minimum confinement time of 18 months, current law sets no mandatory minimum confinement time. Sentences of 18 months would be served in the state prison system and not county jails. This provision could lead to a decrease in offenders placed in jail as opposed to state prison. No data exists to estimate how this provision might lead to decreased costs for county jails. The average FY16 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 \$15,303,100 annually. This includes costs for placing inmates in contract beds and additional treatment staff for DAI institutions.

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 decrease if offenders are placed in prison rather than jail.

### **Long-Range Fiscal Implications**