

Fiscal Estimate Narratives

DOC 2/23/2017

LRB Number	17-1977/1	Introduction Number	SB-073	Estimate Type	Original
Description mandatory period of confinement for homicide by intoxicated use of a vehicle and providing a criminal penalty					

Assumptions Used in Arriving at Fiscal Estimate

Under current law, a person who causes the death of another by operating or handling a vehicle while under the influence of an intoxicant, with a detectable amount of a restricted controlled substance in his or her blood, or with a prohibited alcohol concentration (homicide by intoxicated use of a vehicle) is guilty of a felony. If the person has no prior convictions, operator's license suspensions, or operator's license revocations related to operating a vehicle while intoxicated, he or she is guilty of a Class D felony and subject to a maximum fine of \$100,000, imprisonment for up to 25 years, or both. If the person has one or more prior convictions, operator's license suspensions, or operator's license revocations related to operating a vehicle while intoxicated, he or she is guilty of a Class C felony and subject to the same maximum fine, imprisonment for up to 40 years, or both.

Under current law, if a person is sentenced to imprisonment for a felony, he or she is sentenced to serve a portion of his or her sentence incarcerated in prison (period of confinement) and a portion of his or her sentence under extended supervision in the community. Current law does not generally require a minimum period of confinement for a person who is sentenced to imprisonment for a felony. However, there are exceptions, including some minimum periods of confinement for persons who are sentenced to imprisonment for committing a seventh or subsequent offense related to operating a vehicle while intoxicated.

Under this bill, a person who is convicted of homicide by intoxicated use of a vehicle must be sentenced to a period of confinement in prison of at least five years. Under the bill, if the decedent was a passenger in the person's car, a court may sentence the person to a period of confinement that is 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 a period of confinement that is less than the minimum, the bill requires the court to put its findings in writing.

Population Estimates:

For purposes of this fiscal estimate, DOC used admissions data related to OWI convictions occurring in FY2014-FY2016.

Under current penalty structures for these offenses, from this FY2014-FY2016 data-set, on average 8 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, 33 offenders were admitted to prison.

Sentencing Assumptions:

The Department assumed 100% of the 41 offenders would be admitted to prison on an annual basis for an additional 7 months. The confinement portion assumed is based upon the current average prison sentences (53 months) under current law subtracted from the mandatory minimum prison sentence (60 months) as defined by the bill. The bill does not impose a mandatory minimum sentence if the decedent was a passenger in the vehicle at the time of the offense. DOC does not know if the 41 people admitted to prison and community corrections under this offense had the decedent in the vehicle at the time of the offense. For purposes of this fiscal estimate, DOC assumes that none of the decedents were in the vehicle at the time of offense, therefore, triggering the mandatory minimum confinement time of 60 months as defined by the bill.

DOC Adult Institutions:

The Department would see an increase to its inmate population of approximately 24 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 24 additional inmates.

The average FY15 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 \$5,600 based on FY15 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 2.0 additional FTE once the full increase is reached. The new AODA staffing includes:

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

It is anticipated \$213,300 annually would be needed to run these programs as well as approximately \$40,000 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. DOC DAI facilities are at capacity and the Department is utilizing contract beds space in county jails. As of February 10, 2017, 185 county contract beds are being utilized to house DOC 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 \$336,900 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 \$449,200 per year would be needed once these populations fully increase to 24 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. If in effect, based on FY14-FY16 average admissions data, only 8 offenders would be placed in prison versus community supervision. This small number would not result in any decrease in costs in Community Corrections. In addition, the bill does not call for any minimum time on extended supervision and extended supervision sentences already exist. No data exists to demonstrate that this bill would 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 5 years, current law sets no mandatory minimum confinement time. Sentences of 5 years 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 \$662,500 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
