

Fiscal Estimate - 2019 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 19-1007/1	Introduction Number AB-0018
Description penalties for offenses related to operating a vehicle while intoxicated and providing a penalty	
Fiscal Effect	
State: <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs	
Local: <input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input checked="" type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 5. Types of Local Government Units Affected <input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Village <input checked="" type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
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	
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Date 3/11/2019	

Fiscal Estimate Narratives

DA 3/11/2019

LRB Number	19-1007/1	Introduction Number	AB-0018	Estimate Type	Original
Description penalties for offenses related to operating a vehicle while intoxicated and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

This bill criminalizes a first offense relating to operating a vehicle while intoxicated (OWI-related offense).

Under current law, a first OWI-related offense is a civil violation, unless there was a minor passenger under the age of 16 in the vehicle at the time of the offense. A person who commits a civil OWI-related offense is subject to a forfeiture of not less than \$150 nor more than \$300. Subsequent OWI-related offenses are crimes punishable by fines and periods of imprisonment that increase with every subsequent offense.

Current law increases the penalty for a second OWI-related offense if the person committed the second offense within ten years of the first offense or if the person committed an OWI-related offense that caused death or great bodily harm to another.

Under this bill, a person who commits a first OWI-related offense is guilty of a Class C misdemeanor and may be fined up to \$500, imprisoned for up to 30 days, or both. Under the bill, a person who commits a second OWI-related offense is subject to the increased penalties regardless of whether the person commits the offense within ten years of his or her first OWI-related offense.

Under the bill, a court may, upon petition by the person who has been convicted of a first OWI-related offense, vacate the person's criminal conviction and amend the record to a civil violation if, in the five years since the person was convicted of the offense, he or she has not committed any other OWI-related offense. Under the bill, the clerk of courts amends the court records that are available in person and online to show only the civil violation.

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Responsive prosecutors believe enactment of this bill will have a significant effect on their offices. The Wisconsin District Attorney Association (WDAA) estimates that it requires an average of 2.91 hours to prosecute a misdemeanor criminal traffic case such as the proposed first offense OWI. According to the Wisconsin Department of Transportation, in 2017, the last year for which data is available, there were 16,977 citations for Operating While Intoxicated (1st Offense) issued to Wisconsin residents. Not included in this statistic is non-Wisconsin residents cited with OWI 1st offense in Wisconsin. None of these cases are currently being prosecuted criminally; the effect of this change in law would be creating an additional 17,000+ (when including non-resident) new criminal cases to be handled by the 71 District Attorney offices across the state.

First offense OWI citations in 2017: 16,977 (WI residents only)

Hours per case 2.91

Total hours 49,403

On average, a prosecutor dedicates 1,162 hours per year to the prosecution of charged cases (the remainder of their time is used for administrative duties, review of cases not-charged, guidance to law enforcement, professional education, training, leave, etc.). Based upon this average, 42.5 new prosecutors would be required to handle first offense OWI cases for WI residents alone.

Total new prosecutors required: 42.5

Salary and Fringe for an entry level prosecutor: \$72,752.47 annually

The cost of new prosecutors required to handle first offense OWI cases would be \$3,091,979 annually.

Note 1: This analysis does not reflect OWI 1st offense cases charged to non-Wisconsin residents, so the actual cost and number of cases is higher.

Note 2: The 2.91 hours may underestimate the average time needed to prosecute these cases. The typical defendant accused of 1st offense OWI has no other criminal record and is gainfully employed. Thus there is significant incentive and resources to mount a vigorous defense to include motion hearings and contested jury trials. Motion hearings and jury trials require the arresting officers and other technical witnesses to testify to the intoxication levels. This would increase costs to the state laboratories and law enforcement agencies across the state.

Note 3: The most recent District Attorney workload analysis from August of 2018 shows that District Attorney Offices across the state are understaffed by 166 prosecutors based on their current workloads. This change in law would increase the Wisconsin prosecutor shortage to 208.5 FTE prosecutors. The cost to remedy the entire prosecutor shortfall would be \$15,168,889 annually.

Long-Range Fiscal Implications

The responsive District Attorneys did not take a position on whether first offense OWI should or should not be criminalized. However, the consensus among prosecutors is that if OWI first offense is criminalized then sufficient resources must be allocated to the District Attorney Offices across the state to offset the new caseload. Failure to provide relief would result in our District Attorney offices operating with fewer than 2/3 of the prosecutorial staff they should have.