

Fiscal Estimate - 2009 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 09-2859/1	Introduction Number AB-0283																		
Description Operating a vehicle while intoxicated, granting rule-making authority, making an appropriation, and providing a penalty																			
Fiscal Effect																			
State:																			
<input type="checkbox"/> No State Fiscal Effect <input checked="" type="checkbox"/> Indeterminate <table style="width: 100%; margin-left: 20px;"> <tr> <td><input type="checkbox"/> Increase Existing Appropriations</td> <td><input type="checkbox"/> Increase Existing Revenues</td> <td><input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget</td> </tr> <tr> <td><input type="checkbox"/> Decrease Existing Appropriations</td> <td><input type="checkbox"/> Decrease Existing Revenues</td> <td><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</td> </tr> <tr> <td><input type="checkbox"/> Create New Appropriations</td> <td></td> <td><input type="checkbox"/> Decrease Costs</td> </tr> </table>		<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									
<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 checked="" type="checkbox"/> Indeterminate <table style="width: 100%; margin-left: 20px;"> <tr> <td>1. <input checked="" type="checkbox"/> Increase Costs</td> <td>3. <input type="checkbox"/> Increase Revenue</td> <td rowspan="4" style="vertical-align: top;">5. Types of Local Government Units Affected</td> </tr> <tr> <td><input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory</td> <td><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</td> </tr> <tr> <td>2. <input type="checkbox"/> Decrease Costs</td> <td>4. <input type="checkbox"/> Decrease Revenue</td> </tr> <tr> <td><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</td> <td><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</td> </tr> </table> <table style="width: 100%; margin-left: 20px;"> <tr> <td><input type="checkbox"/> Towns</td> <td><input type="checkbox"/> Village</td> <td><input type="checkbox"/> Cities</td> </tr> <tr> <td><input checked="" type="checkbox"/> Counties</td> <td><input type="checkbox"/> Others</td> <td></td> </tr> <tr> <td><input type="checkbox"/> School Districts</td> <td><input type="checkbox"/> WTCS Districts</td> <td></td> </tr> </table>		1. <input checked="" type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	5. Types of Local Government Units Affected	<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	<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	
1. <input checked="" type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	5. Types of Local Government Units Affected																	
<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																		
<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																		
Fund Sources Affected																			
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS <table style="width: 100%; margin-left: 200px;"> <tr> <td>Affected Ch. 20 Appropriations</td> </tr> </table>		Affected Ch. 20 Appropriations																	
Affected Ch. 20 Appropriations																			
Agency/Prepared By	Authorized Signature	Date																	
DOC/ Lucie Widzinski-Pollock (608) 240-5416	Robert Margolies (608) 240-5056	6/10/2009																	

Fiscal Estimate Narratives

DOC 6/10/2009

LRB Number	09-2859/1	Introduction Number	AB-0283	Estimate Type	Original
Description Operating a vehicle while intoxicated, granting rule-making authority, making an appropriation, and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

Interlock Device

Under current law no one may remove, disconnect, tamper with or otherwise circumvent the operation of an ignition interlock device. The current first offense penalty is a fine between \$150 and \$600. Second and/or subsequent violations that occur within 5 years have a penalty of \$300 to \$1,000 and imprisonment of not more than six months in a county jail.

This bill imposes a penalty of up to six months in jail for first offense tampering or circumventing violations. This same penalty is also applicable to persons who fail to have an ignition interlock device installed as ordered by the court. The Department cannot predict the number of tampering or failure to install violations that will occur or what the sentencing practices of judges will be as a result of this legislation. The increased penalty allowing up to 6 months in jail for a first offense violation is anticipated to increase costs to local county jails.

Winnebago County Pilot

Under current law Winnebago County is authorized to run a pilot Operating While Intoxicated (OWI) program for 2nd and 3rd offense OWI violators. The pilot program allows reduction of the OWI imprisonment term if the offender successfully completes a period of probation that includes alcohol and other drug treatment.

This bill expands this sentencing option to any county that opts to allow a violator to successfully complete a period of probation that includes alcohol and other drug treatment in exchange for a shorter period of imprisonment.

Winnebago County reports CY 2008 savings of over \$275,000 in jail cost savings from shorter sentences that resulted in reduced jail bed days of 4,183 during this same time period. The Winnebago County pilot requires the offender to pay for the initial assessment and then any required treatment dependent on their ability to pay. If other counties require the same kind of payment system, there will be some treatment costs that are borne by the county. It is unclear if this would be an additional cost to the jail or some other department within the county.

The Department is not able to predict the number of counties that the Winnebago Pilot will be expanded to. If other counties experience the same results that are seen in Winnebago County local county jails could see reduced costs.

Injury by Intoxicated Use of a Motor Vehicle

Under current law a person who commits an OWI related offense and also causes injury (other than great bodily harm) to another is subject to a fine of not less than \$300 nor more than \$2,000, imprisonment of not less than 30 days nor more than one year, or both.

This bill increases the penalty to a class G felony with a bifurcated penalty structure of 10 years (5 years maximum confinement and 5 years maximum extended supervision) if the injury is related to a second or more OWI. In CY2006 the Department had 158 offenders admitted to probation and 6 inmates admitted to prison for Injury by Intoxicated Use of a Vehicle (not great bodily harm); it is unknown how many of these offenses were related to a second or more OWI. If, as a result of this legislation, more offenders are sentenced under the class G felony structure to a prison sentence, the Department will see increased costs.

Probation for 2nd and 3rd Offense OWI Convictions

Under current law a trial court may not place a person on probation if the person has committed a second or third violation related to operating a vehicle while intoxicated. This bill authorizes a court to place a person on probation for a maximum of one year.

Also under current law if a crime carries a mandatory minimum period of incarceration of one year or less, the person must be incarcerated for at least the mandatory minimum period as a condition of his or her probation. This bill makes this mandatory minimum incarceration requirement applicable to these convictions as well (5 days for a 2nd OWI conviction and 30 days for a 3rd).

Under current penalties, the Department of Corrections (DOC) may receive offenders when they obtain a 4th Offense OWI conviction (misdemeanor probation). During calendar year (CY) 2007 Department of Transportation (DOT) data shows that there were 1,902 convictions for 4th offense OWI. During this same calendar year period, DOC had 586 misdemeanor probation admissions for driving while intoxicated, approximately 30.81% of the total DOT convictions.

For purposes of this fiscal estimate, DOT's CY 2007 OWI conviction information is used to estimate additional staffing and funding that would be needed if convictions remained as they were in 2007 under the new penalty structures. In CY2007, there were 9,196 convictions for 2nd offense OWI and 4,114 convictions for 3rd offense OWI. If 30.81% of these convictions resulted in a one year probation term, the Department would see a permanent increase of 4,101 offenders on community supervision after the first full year of enactment of this legislation.

Community Corrections Staffing/Costs – If it is assumed that these OWI offenders will have similar supervision needs to other community corrections offenders, and the Department's Case Classification/Staff Deployment calculations are utilized to estimate additional staffing needs associated with these increased populations, the Department would need 104.50 additional FTE within the first year of enactment (73.00 FTE Probation and Parole Agents, 7.00 FTE Unit Supervisors and 24.50 FTE clerical support positions).

If FY08 average costs of a DCC probation/parole offender (\$6.68/day) are used to estimate additional funding needed to provide community supervision for this increased population, the Department would need approximately \$10 million on an annual ongoing basis once the full population increase of 4,101 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. Additional AODA treatment in the community could be needed in the following areas:

- . . . Aftercare treatment - approx. \$24.47/offender (1x per month for 4 months)
- . . . Outpatient treatment – approx. \$133.12/offender (1x per month for 3 months)
- . . . Intensive outpatient treatment – approx. \$632.83/offender (4x per week for 3 months)
- . . . Inpatient Treatment – approximately \$120/day/offender
 - 90 day (3 mo) program totals \$10,800/offender
 - 120 day (4 mo) program totals \$14,400/offender
 - 180 day (6 mo) program totals \$21,800 per offender

Although it is assumed that 100% 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 each of these different types of AODA treatment options.

Electronic Monitoring – The Department would utilize electronic monitoring on an estimated 25% of the community OWI offenders for the first 6 months of supervision and place 100% of the community OWI offenders on sobriety and interlock devices for the term of their community supervision. Costs for electronic monitoring are \$0.92/day and \$1.09/day for sobriety. Interlock devices require a \$60.00 installation fee, \$70.00 monthly fee, \$60.00 one time security fee and a \$90.00/year charge for recalibration which is needed every 60 days. For purposes of this estimate all of the interlock costs are assumed to be paid by the Department.

Using the CY2007 DOT conviction numbers, equipment costs are projected to be \$2.2 million per year. An additional 56.00 FTE Monitoring Center staff would be needed at a cost of approximately \$3.1 million per year plus an initial \$550,700 in startup costs.

4th Offense OWI Convictions

Under current law, a 4th offense OWI conviction is a misdemeanor punishable by a \$600 to \$2,000 fine and 60 days to one year imprisonment. Sentencing courts can also place a 4th offense OWI offender on probation for up to two years. Under this bill 4th offense OWI is limited to a probation term of up to one year.

In CY2007 DOC had 586 admissions to probation for misdemeanor Driving While Intoxicated. If you assume that all of these individuals received a probation term of two years, by the end of the second year they would represent an average daily population (ADP) on probation of 1,172 offenders. The reduction in probation

term to a maximum of one year would reduce the ADP to 586 resulting in annual cost savings in the Department's Community Corrections costs of approximately \$1.4 million.

Under this bill if the 4th offense OWI occurs within 5 years of a previous OWI conviction, the offender is convicted of a class H felony. If the offender is sentenced to prison under a bifurcated sentence, he/she must serve a minimum of two years to a maximum of 3 years in prison and 3 years on extended supervision. It is not known how many 4th offense OWI probation admissions occurred within 5 years of a prior OWI conviction. In FY08 the annual cost to supervise an offender on community supervision was \$2,440, while the cost to incarcerate an inmate in DOC's institutions was approximately \$30,700 per year.

5th Offense and Greater OWI Convictions

This proposed legislation does not change the felony class for any OWI offenses for 5th offense or greater OWI convictions. The legislation, does, however set new minimum confinement periods if the sentencing court uses a bifurcated sentencing structure at the time of sentencing. New minimum confinement periods range from two years for 5th and 6th offense, three years for 7th through 9th offense and four years for 10 or more OWI offenses. It is unknown how many offenders will be convicted for each of these offenses in the future or how the new minimum sentence requirements will affect sentences utilized by the courts.

During CY 2007 the Department released 667 offenders to extended supervision who had been convicted of Driving While Intoxicated. The cost for one of these offenders to spend one more year in prison rather than being released to ES is approximately \$28,300 (\$30,700 per year to incarcerate an offender rather than \$2,440 per year to supervise them on community supervision).

SUMMARY:

New jail penalties related to tampering or failing to install interlock devices are anticipated to increase local jail costs, while expansion of the Winnebago Pilot to other counties and making some Injury by Intoxicated Use of a Vehicle convictions punishable as a felony have the potential to reduce local jail costs.

It is anticipated that increasing some Injury by Intoxicated Use of a Vehicle convictions to a class G felony, placing 2nd and 3rd offense OWI offenders on probation, increasing 4th offense OWI convictions that occur within 5 years to class H felonies and imposing minimum confinement periods on bifurcated sentence structures for felony OWI convictions will result in cost increases to the Department of Corrections.

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, making it impossible to provide a specific fiscal impact.

Long-Range Fiscal Implications