

Fiscal Estimate Narratives

DOJ 6/16/2009

LRB Number	09-1443/1	Introduction Number	SB-066	Estimate Type	Original
Description operation of a motor vehicle while under the influence of an intoxicant and providing a penalty.					

Assumptions Used in Arriving at Fiscal Estimate

2009 Senate Bill 66 makes several changes to existing law relating to drunk driving. The following changes will have an impact on the Department of Justice:

1) Imposing Surcharges for 1st Offense OWI with .08-.099 BAC

Under current law, a person who commits their first OWI offense with a blood alcohol concentration between .08 and .099 is subject only to a forfeiture of not less than \$150 nor more than \$300. SB 66 subjects a person who commits their first OWI offense with a blood alcohol concentration between .08 and .99 to the several surcharges and fees paid by other OWI offenders, including the crime laboratories and drug law enforcement surcharge, and the penalty surcharge.

The crime laboratories and drug law enforcement surcharge is \$8 and is used to support the DNA databank, DNA evidence prosecution efforts, the crime laboratories, and drug law enforcement efforts. The penalty surcharge is generally assessed when a court imposes a fine or forfeiture for a violation of state law or local ordinance. The penalty surcharge is 26% of the fine or forfeiture. Penalty surcharge revenues are allocated to appropriations in a number of state agencies, including DOJ, to support specific programs. Approximately 65% of penalty surcharge dollars are allocated to DOJ programs.

According to DOT, in 2007, there were 950 cases of driver license revocations for 1st offense OWI with a BAC between .08 and .099. As a result, in 2007, \$7,600 (950 x \$8) in additional crime laboratories and drug law enforcement surcharge dollars could have been generated under AB 283. Also, a minimum of \$37,050 (950 x \$150 x 26%) in additional penalty surcharge dollars could have been generated and DOJ could have received an additional \$24,082 (\$37,050 x 65%) of penalty surcharge dollars for department programs in 2007 under SB 66.

2) Making third offense OWI within five years of a prior OWI a felony and making fourth offense OWI a felony.

According to DOT, in 2007, there were approximately 1,300 convictions for third OWI offense within five years of a prior offense. DOT also reports that there were approximately 1,900 convictions for fourth OWI offense in 2007.

While most felony prosecutions are handled by district attorneys, assistant attorneys general in the Department of Justice's Criminal Litigation Unit on occasion act as special prosecutors throughout Wisconsin at the request of district attorneys. In addition, the Department of Justice's Criminal Appeals Unit represents the State of Wisconsin in defending felony convictions when those convictions are challenged in state or federal court. Under Wisconsin law, this unit is charged with preparing briefs and presenting arguments in front of any state appellate or federal court hearing a challenge to a felony conviction.

Since SB 66 broadens the types of activities that can be prosecuted as felonies. Enactment of the bill will result in a substantial increase in caseload for DOJ, particularly the Criminal Appeals Unit.

DOJ estimates that approximately one-third to one-half of the OWI-related convictions covered by SB 66 will end up being appealed. As a result, based on 2007 figures, DOJ's Criminal Appeals Unit caseload will increase by approximately 1,000-1,500 cases under SB 66. To successfully defend the convictions in those appeals, DOJ will need 20 Assistant Attorneys General to handle this increased caseload. Total salary, fringe, supplies, and equipment costs for 20 Assistant Attorneys General is \$3,078,000 for the first year and \$2,912,000 for the second and subsequent years.

DOJ's crime lab currently performs the blood alcohol analysis of blood samples submitted by local law enforcement agencies in felony OWI violations. DOJ is currently able to process incoming blood samples

within 2 days. To process an additional 3,200 blood samples annually, DOJ will require two additional gas-chromatography units and two toxicology analysts. The total cost for two GC units is \$140,000 and the total cost for two toxicology analysts is \$157,700. Even with these additional resources, DOJ estimates that the processing time for felony OWI blood samples will increase to approximately four weeks.

Total first-year costs relating to SB 66:

Approximately \$3,375,700.

Total second-year and ongoing costs relating to SB 66:

Approximately \$3,069,700.

Long-Range Fiscal Implications