

Fiscal Estimate Narratives

DOC 2/18/2019

LRB Number 19-1025/1	Introduction Number AB-0016	Estimate Type Original
Description committing a fifth or sixth offense related to operating a vehicle while intoxicated and providing a 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 FY2016-FY2018. Under current penalty structures for these offenses, from this FY2016-FY2018 data-set, on average 438 clients (offenders) per year were placed on probation resulting from these offenses; it is not known how many of the clients placed on probation were ordered to serve time in jail as a condition of probation. Under current penalty structures for these offenses, from this FY2016-FY2018 data-set, on average 343 clients were admitted to prison per year.

Sentencing Assumptions:

The Department assumed 100% of the 438 clients currently sentenced to probation per year would be admitted to prison on an annual basis for the required 18-month minimum. The 343 individuals sentenced to prison under current penalty structures are each sentenced to prison for approximately 20 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 CY2013-2017, the conviction rate of 5th and 6th OWI offenses has been declining approximately 8% each year. This 8% decline is taken into account in this fiscal estimate. As a result, the department assumes about 36 admissions per month in the first year and about 34 admissions per month in the second year.

DOC Adult Institutions:

The Department estimates an increase to its resident (inmate) population of approximately 438 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 639 additional residents.

The new clients would also need SUD (substance use disorder) programming that is not available in the Department's contract beds. New SUD (substance use disorder) programs would need to be created within the Department's current facilities. The Department would need 23.00 additional FTE once the full increase is reached. The new SUD staffing includes:

...22.00 FTE Treatment Specialists
...1.00 FTE Correctional Program Supervisor

It is anticipated \$1,606,000 annually would be needed to run these programs as well as approximately \$100,900 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 FY18 annual cost for a resident in a DOC institution is approximately \$32,700. 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 residents is approximately \$6,600 based on FY18 costs. DOC DAI facilities are at capacity and the Department is utilizing contract beds space in county jails. As of February 1st, 2019, 524 county contract beds are being utilized to house DOC residents. For purposes of this fiscal estimate, it is assumed that contract beds would be utilized to accommodate 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 \$4,452,900 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 \$12,002,100 per year would be needed once these populations fully increase to 639 additional residents.

DOC Community Corrections:

Over the long term it is anticipated that any clients 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 29 months of extended supervision, after serving their confinement time portion of their sentence. Considering that data, this bill might result in an overall decrease in the time clients are sentenced to community supervision. However, DOC is not able to predict the Community Corrections fiscal impact of this bill, as DOC cannot predict the sentencing practices of judges under this bill were it passed into law.

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 likely be served in the state prison system and not county jails. This provision could lead to a decrease in clients 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 FY18 annual cost to jail residents is \$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 \$13,608,100 annually. This includes costs for placing residents 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 clients are placed in prison rather than jail.

Long-Range Fiscal Implications