



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2017 Biennium

Bill # SB0315

Title: Make a third DUI a felony offense

Primary Sponsor: Webb, Roger

Status: As Introduced

- | | | |
|---|---|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
Expenditures:				
General Fund	\$6,379,171	\$12,070,143	\$13,319,661	\$14,614,338
State Special Revenue	(\$50,400)	(\$50,400)	(\$50,400)	(\$50,400)
Federal Special Revenue	(\$101,955)	(\$103,985)	(\$106,050)	(\$108,185)
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>(\$6,379,171)</u>	<u>(\$12,070,143)</u>	<u>(\$13,319,661)</u>	<u>(\$14,614,338)</u>

Description of fiscal impact: SB 315 amends the third conviction of driving under the influence of alcohol or drugs (DUI) from a misdemeanor to a felony offense. This change will cause a significant impact to the state.

FISCAL ANALYSIS

Assumptions:

Department of Corrections (DOC)

1. The penalties imposed for a third DUI offense would be the same as for a fourth DUI offense; that is, the offender shall be sentenced to the Department of Corrections (DOC) for a term of not less than 13 months or more than five years.
2. Statistics provided by the Department of Justice (DOJ), Motor Vehicle Division, indicate that there are:
 - a. An average of 1,033 convictions for 2nd offense DUI (also includes Blood Alcohol Concentration) each year, based on 1,000 convictions in 2013 and 1,065 in 2014.
 - b. An average of 516 convictions for 3rd offense DUI each year, based on 412 in 2013 and 620 in 2014.

3. For informational purposes, under the existing law, an average of 306 offenders are sent to DOC each year for felony 4th offense DUI, with 309 offenders in 2013 and 304 in 2014. Of that 306 annual average, a total of 36 or 11% of offenders did not attend the WATCH program. A total of 270 or 89% attended WATCH; however, another 30 or 11% of these offenders failed or left the WATCH program and completed their 13-month sentences in a prison placement.
4. Based on the 3rd DUI offense statistics provided by DOJ, the DOC will see an increase of 516 new offenders each year. Those 516 offenders will follow one of three paths:
 - a. A total of 89% or 459 offenders will attend WATCH. Of those, a total of 11% or 50 offenders will leave WATCH and transfer to prison, leaving a total of 409 offenders to serve the following sentence pattern based on historical information:
 - i. On average, each DUI offender serves 51 days in jail before sentencing and is given sentence credit on their 13-month sentence. This cost would be the responsibility of local jails.
 - ii. On average, after sentencing each DUI offender serves 44 days in jail awaiting a program placement. This cost would be the responsibility of the DOC.
 - iii. On average, this group of offenders serves 180 days in the WATCH program.
 - iv. The balance (or 120 days) of the 13-month sentence is served on probation.
 - v. The final portion of the sentence is five years of probation supervision.
 - vi. The sentence is complete after 13 months in a program/prison and five years on probation.
 - vii. Total cost in FY 2016 for this group will be \$4,756,298 and in FY 2017 will be \$8,635,868 for a biennial cost of \$13,392,166.
 - b. The 50 offenders who leave the WATCH program without completing their treatment will serve the following sentence pattern based on historical information:
 - i. On average, each DUI offender serves 51 days in jail before sentencing and is given sentence credit on their 13-month sentence. This cost would be the responsibility of local jails.
 - ii. On average, after sentencing each DUI offender serves 44 days in jail awaiting a program placement. This cost would be the responsibility of the DOC.
 - iii. On average, this group will serve 55 days in the WATCH program before leaving.
 - iv. The balance of the 13-month program (245 days) will be served in prison.
 - v. The final portion of the sentence is five years of probation supervision.
 - vi. The sentence is complete after 13 months in a program/prison and five years on probation.
 - vii. Total cost in FY 2016 for this group will be \$636,943 and in FY 2017 will be \$1,515,998 for a biennial cost of \$2,152,942.
 - c. A total of 11% or 57 offenders will be sent directly to a prison placement and, based on historical data, will serve the following sentence pattern:
 - i. On average, each DUI offender serves 51 days in jail before sentencing and is given sentence credit on their 13-month sentence. This cost would be the responsibility of local jails.
 - ii. On average, after sentencing each DUI offender serves 44 days in jail awaiting a program placement. This cost would be the responsibility of the DOC.
 - iii. On average, this group will serve 300 days in prison.
 - iv. The final portion of the sentence would be five years of probation supervision.
 - v. The sentence is complete after 13 months in a program/prison and five years on probation.
 - vi. Total cost in FY 2016 for this group will be \$781,589 and in FY 2017 will be \$1,713,937 for a biennial cost of \$2,495,526.
5. The total cost of this bill is projected to be \$6,174,831 in FY 2016 and \$11,865,803 in FY 2017 for a biennial cost of \$18,040,634. All projections include an inflationary cost of 1.5%.
6. The DOC would need to seek bids for additional secure custody beds to meet the demands of this increased population. The state's citing rules may restrict the locations and availability of this type of program.

Judicial Branch

7. The number of district court cases will increase as a result of this legislation; however, the Judicial Branch is unable to estimate the impact on judicial workload or the fiscal impact. The cumulative impact of such legislation may eventually require additional judicial resources because court dockets currently are full in many judicial districts throughout the state.

Department of Justice (DOJ)*Forensic Science Division*

8. Calendar year 2013 citations issued for 3rd time DUI and 3rd BAC violations totaled 412.
9. DNA samples are necessary on all felony's to be included in the DNA database. This cost is \$25.00 per sample for a total additional cost of \$10,300.
10. There will be impact on testing of urine samples received from individuals on probation. It is estimated that 412 additional urine tests per year will be received at a unit cost of \$25.00 per test, for a total cost of \$10,300.
11. A 1.5% per year inflation factor is applied in the 2019 biennium.

Department of Public Health and Human Services (DPHHS)

12. Historically, individuals with a 3rd DUI might be placed in inpatient or intensive outpatient treatment (IOP) at the expense of the Chemical Dependency Bureau within the Addictive and Mental Disorders Division. Those individuals would now be incarcerated and following that incarceration/treatment, would be placed in outpatient care for the duration of their probation and continuing care. This would result in a cost savings.
13. In FY 2014, 1,997 individuals completing the Assessment Course and Treatment (ACT) program for a DUI conviction were given a treatment recommendation. Of the 1,997 individuals completing the program, 192 reported having a 3rd DUI conviction.
14. Currently, 3% of all ACT clients are recommended for inpatient treatment. It is assumed these individuals would be placed in inpatient treatment at the Montana Chemical Dependency Center (MCDC) in Butte. The average length of stay at MCDC is 21 days and the daily rate is \$400 per day. The cost for 6 individuals (192 x 3%) would be \$50,400 per year (6 x 21 x \$400). This would be a savings to State Special Revenue Alcohol Tax.
15. Currently, 18% of all ACT clients are recommended for Intensive Outpatient Treatment (IOP). IOP averages 10 hours per week for 12 weeks at a total cost of \$2,913 per person with a 2% provider rate increase each year. In FY 2016, the total cost for 35 individuals (192 x 18%) would be \$101,955 (35 x \$2,913). In FY 2017, the total cost savings for 35 individuals would be \$103,985 (35 x \$2,971). In FY 2018, the total cost savings for 35 individuals would be \$106,050 (35 x \$3,030). In FY 2019, the total cost savings for 35 individuals would be \$108,185 (35 x \$3,091). This would be a cost savings to federal block grant funds.
16. The remaining individuals would be placed in an outpatient treatment program and no additional cost savings would result.

Office of State Public Defender (OPD)

17. The Office of the State Public Defender (OPD) has the statutory obligation to represent individuals charged with a crime who cannot afford to hire counsel, represent individuals on direct appeal, and also to provide counsel if there is a conflict of interest.
18. The number of new cases of these types received by the Office of the State Public Defender in FY 2015 through February 16, 2015 is 186.
19. Annualized, it is expected there would be a total 297 new cases in FY 2015.
20. The agency estimates it takes 7 hours of attorney work time per case for a current 3rd offense DUI. The agency estimates it takes 15 hours of attorney work time per case for a felony DUI. The incremental time is 15 – 7 or 8 hours.
21. OPD attorneys currently carry above maximum caseload. Therefore, it is assumed that the additional hours of work would be conducted by contract attorneys. The contract attorney rate is \$62/hr. The additional cost for contract attorneys would be \$147,312.

22. The agency estimates approximately 20% of these cases may result in revocations or 59 cases which would also take 8 hours per case. The costs for contract attorneys for this work would be \$29,264.
23. In FY 2014, the agency’s Appellate Defender program opened 12 of these types of cases.
24. Because 3rd DUIs are currently a misdemeanor, the appellate defender receives audio recordings of the court proceedings at no cost.
25. If this bill passes, the Appellate Defender will be required to request a transcript of the proceedings at a cost of approximately \$597 per case. The estimated transcript cost per fiscal year would increase by \$7,164.
26. Based on assumptions 20-24, the total agency cost per fiscal year is estimated to be \$183,740.
27. A 1.5% per year inflation factor is applied in the 2019 biennium.

Department of Corrections

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	\$6,174,831	\$11,865,803	\$13,112,256	\$14,403,821
TOTAL Expenditures	\$6,174,831	\$11,865,803	\$13,112,256	\$14,403,821
<u>Funding of Expenditures:</u>				
General Fund (01)	\$6,174,831	\$11,865,803	\$13,112,256	\$14,403,821
TOTAL Funding of Exp.	\$6,174,831	\$11,865,803	\$13,112,256	\$14,403,821
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0

Department of Justice

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	\$20,600	\$20,600	\$20,909	\$21,223
TOTAL Expenditures	\$20,600	\$20,600	\$20,909	\$21,223
<u>Funding of Expenditures:</u>				
General Fund (01)	\$20,600	\$20,600	\$20,909	\$21,223
TOTAL Funding of Exp.	\$20,600	\$20,600	\$20,909	\$21,223
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	(\$20,600)	(\$20,600)	(\$20,909)	(\$21,223)
State Special Revenue (02)	\$0	\$0	\$0	\$0

Department of Public Health and Human Services (DPHHS)

	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>	<u>FY 2018</u> <u>Difference</u>	<u>FY 2019</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	(\$50,400)	(\$50,400)	(\$50,400)	(\$50,400)
Benefits/Claims	(\$101,955)	(\$103,985)	(\$106,050)	(\$108,185)
TOTAL Expenditures	(\$152,355)	(\$154,385)	(\$156,450)	(\$158,585)
<u>Funding of Expenditures:</u>				
State Special Revenue (02)	(\$50,400)	(\$50,400)	(\$50,400)	(\$50,400)
Federal Special Revenue (03)	(\$101,955)	(\$103,985)	(\$106,050)	(\$108,185)
TOTAL Funding of Exp.	(\$152,355)	(\$154,385)	(\$156,450)	(\$158,585)
<u>Revenues:</u>				
State Special Revenue (02)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0

Office of Public Defender

	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>	<u>FY 2018</u> <u>Difference</u>	<u>FY 2019</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Operating Expenses	\$183,740	\$183,740	\$186,496	\$189,294
TOTAL Expenditures	\$183,740	\$183,740	\$186,496	\$189,294
<u>Funding of Expenditures:</u>				
General Fund (01)	\$183,740	\$183,740	\$186,496	\$189,294
TOTAL Funding of Exp.	\$183,740	\$183,740	\$186,496	\$189,294
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	(\$6,379,171)	(\$12,070,143)	(\$13,319,661)	(\$14,614,338)
State Special Revenue (02)	(\$50,400)	(\$50,400)	(\$50,400)	(\$50,400)
Federal Special Revenue (03)	(\$101,955)	(\$103,985)	(\$106,050)	(\$108,185)

Long-Term Impacts:

Department of Corrections

1. This bill will increase the DOC correctional population by 516 offenders each year. The current population sentenced each year with a fourth time DUI is 306 for the past two years. This bill will double the offender population for this offense type. The estimated costs are \$151,871,503 over the next ten years.

Sponsor's Initials

Date

Budget Director's Initials

Date