



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # HB0115

Title: Increase penalties for 5th and subsequent DUI

Primary Sponsor: Mercer, Bill

Status: As Amended

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$104,032	\$390,220
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>(\$104,032)</u>	<u>(\$390,220)</u>

Description of fiscal impact: HB 115, as amended, would have a fiscal impact on the Department of Corrections. The bill changes sentencing options for individuals convicted for 5th and subsequent DUIs. 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 to provide counsel if there is a conflict of interest.

FISCAL ANALYSIS

Assumptions:

Department of Corrections (DOC)


- The amended bill language no longer imposes a mandatory sentence for 5th and 6th DUIs but could have an impact on the Department of Corrections (DOC) if there are any cases which could be prosecuted due to the changes proposed in the bill. The department is unable to determine the entire fiscal impact of these cases as it cannot predict how the courts will impose sentences and for what length nor can the department predict how the Board of Pardons & Parole will handle these cases.
- The proposed language in subsection (3) increases the potential penalties and requires placement in state prison: "imprisonment in the *state prison* for a term of not more than 10 years." It prohibits a deferred sentence. The previous penalty was not less than 13 months and not more than 5 years.

3. The proposed language in subsection (4) increases the potential penalties and requires placement in state prison: “imprisonment in the *state prison* for a term of not more than 25 years.” It prohibits a deferred sentence.
4. The proposed language in subsection (5) increases the penalties and requires placement in state prison for a term of not less than 5 years or more than 25 years. The first 5 years of the sentence may not be suspended.
5. The five-year average number of offenders sentenced for a 5th, or subsequent, DUI is 55. The average number of offenders with a 7th or subsequent DUI is 6. The DOC would no longer have the discretion to send these offenders to treatment. The bill imposes a mandatory minimum sentence of 5 years in a state prison for 7th and subsequent DUI offenses.
6. The average cost per day for a male inmate at Montana State Prison (MSP) in FY 2020 was \$106.91.
7. The annual cost to incarcerate an offender at MSP is \$39,022. The department calculated the increased cost to DOC to incarcerate approximately 6 offenders annually in secure care.
8. The new requirements for sentencing under HB 115 would begin with new offenses committed on or after October 1, 2021. The length of time for conviction and sentencing on the offenses varies throughout the state but may take up to a year or more. The DOC would anticipate the financial impact of this bill would begin in November 2023, with the impact growing in subsequent years.
9. The DOC assumes the sentencing for DUI’s trend will continue to decline over time.

Office of Public Defender (OPD)

10. In FY 2019 and FY 2020 the OPD received 460 cases of felony DUI fourth offense or higher. OPD assumes that the increased penalties for a fifth or subsequent DUI in this legislation may increase the number of trials requested by clients, however, the office cannot quantify the fiscal impact.

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Personal Services	\$0	\$0	\$0	\$0
Operating Expenses	\$0	\$0	\$104,032	\$390,220
TOTAL Expenditures	<u>\$0</u>	<u>\$0</u>	<u>\$104,032</u>	<u>\$390,220</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$0	\$0	\$104,032	\$390,220
TOTAL Funding of Exp.	<u>\$0</u>	<u>\$0</u>	<u>\$104,032</u>	<u>\$390,220</u>
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	\$0	\$0	(\$104,032)	(\$390,220)



 Sponsor's Initials

2/19/21

 Date



 Budget Director's Initials

2/19/21

 Date