



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	HB0115	Title:	Increase penalties for 5th and subsequent DUI
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Primary Sponsor:	Mercer, Bill	Status:	As Introduced
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- 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</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>
Expenditures:				
General Fund	\$0	\$0	\$936,288	\$3,551,002
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>(\$936,288)</u>	<u>(\$3,551,002)</u>

Description of fiscal impact: HB 115 would have a fiscal impact on the Department of Corrections. Currently, a treatment program is 180 days and under this bill, the prison term the offender must be sentenced to not less than three years or more than 10 years, the first three years of which may not be suspended. 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 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 and prohibits a suspended sentence for the first three years. The previous penalty was not less than 13 months and not more than 5 years.

2. The five-year average number of offenders sentenced for a 5th, or subsequent, DUI is 55. The DOC would no longer have the discretion to send these offenders to treatment. The bill imposes a mandatory minimum sentence of 3 years in a state prison.
3. The average cost per day for a male inmate at Montana State Prison (MSP) in FY 2020 was \$106.91.
4. The annual cost to incarcerate an offender at MSP is \$39,022. The department calculated the increased cost to DOC to incarcerate approximately 55 offenders annually in secure care. The additional cost for administrative overhead is not included in this calculation.
5. 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 and could 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.

Office of Public Defender (OPD)

6. 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	\$936,288	\$3,551,002
TOTAL Expenditures	<u>\$0</u>	<u>\$0</u>	<u>\$936,288</u>	<u>\$3,551,002</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$0	\$0	\$936,288	\$3,551,002
TOTAL Funding of Exp.	<u>\$0</u>	<u>\$0</u>	<u>\$936,288</u>	<u>\$3,551,002</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	(\$936,288)	(\$3,551,002)

Long-Term Impacts:

1. The proposed language in subsection (3) appears to envision a mandatory three-year sentence in state prison, which is not required by the current language. This would increase financial strain and require bed space that is limited in a correctional facility.
2. Subsection (4) creates additional penalties if an individual were previously sentenced under subsection (3). The language prohibits suspension of the first five years of the sentence. Resulting in a mandatory minimum of five years in state prison.

Technical Notes:

1. The DOC assumes the sentencing for DUI's trend will continue to decline based on the current history.
A: FY 2026 assuming 50 new convictions and 55 releases have a fiscal impact of \$4,292,420
B: FY 2027 assuming 45 new convictions and 55 releases have a fiscal impact of \$3,902,200
C: FY 2028 assuming 40 new convictions and 55 releases have a fiscal impact of \$2,757,090.
2. The full fiscal impact after FY 2025 is estimated at this time due to the discretionary sentencing language in the bill.

NOT SIGNED BY SPONSOR

Sponsor's Initials

1/22/21
Date

KA
Budget Director's Initials

1/21/21
Date