

	likely to exceed minimal	likely to exceed minimal	to exceed minimal
Municipalities			
Revenues	Potential loss in court costs and fines, likely to be no more than minimal	Potential loss in court costs and fines, likely to be no more than minimal	Potential loss in court costs and fines, likely to be no more than minimal
Expenditures	Potential criminal justice system cost decrease, not likely to exceed minimal	Potential criminal justice system cost decrease, not likely to exceed minimal	Potential criminal justice system cost decrease, not likely to exceed minimal

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- ***County criminal justice system expenditures.*** The bill's harassment provisions could increase a given county criminal justice system's costs related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and subsequent sanctioning of certain offenders, as such offenders may work harder to avoid the imposition of a term, or a longer term, of incarceration in jail or prison. As the number of criminal cases likely to be affected by these provisions of the bill appears to be relatively small, then any potential increase in any given county criminal justice system's expenditures seems unlikely to exceed minimal on an ongoing basis. For the purposes of this fiscal analysis, a minimal expenditure increase means an estimated cost of no more than \$5,000 per year for any affected county criminal justice system.
- ***Municipal criminal justice system expenditures.*** Arguably, the bill's harassment provisions may shift criminal cases that would have been handled by municipal courts and county courts as misdemeanors under existing law to courts of common pleas where such cases will be handled as felonies and offenders could be subjected to more serious sanctions. As a result, municipalities may shed some of their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning certain offenders. The number of offenders, however, that could be affected in this manner in any given municipal criminal justice system annually appears likely to be relatively small. Assuming that were true, then any decrease in the annual operating costs of any given municipal criminal justice system seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal expenditure decrease means an estimated annual cost reduction of no more than \$5,000 for any affected municipal criminal justice system.
- ***Court cost and fine revenues.*** As noted, the bill's harassment provisions may shift certain cases handled by county courts and municipal courts (which handle misdemeanors) into courts of common pleas (which handle felonies), thus creating a potential loss of court cost and fine revenue for municipalities. Conversely, it creates the possibility that counties may gain court cost and fine revenue. It is also possible that offenders may be convicted of a more serious felony offense and subsequently fined higher amounts than might otherwise have been the case under current law and sentencing practices. As the number of affected criminal cases appears likely to be relatively small, the amount of annual court cost and fine revenue that municipalities might lose and counties might gain would be no more than minimal. For the purposes of this fiscal analysis, minimal in the context of revenues means an estimated gain or loss of no more than \$5,000 per year for any affect local jurisdiction.
- ***Testing costs.*** As a result of the bill's harassment prohibitions, additional persons may be charged with the offense of harassment with a bodily substance and be required to submit to, and pay for, the appropriate test(s). As of this writing, however, LSC fiscal staff has not collected any information suggesting that there will be a noticeable increase in the number of additional persons that might be charged, tested, and determined to be unable to pay the testing costs in any given local criminal justice system. Assuming that were true, then any affected county or municipal criminal justice system appears unlikely to experience a problematic increase in testing costs.
- ***Nunc pro tunc orders.*** The bill permits, under certain circumstances, a sentencing court to issue a *nunc pro tunc* order to make a correction to a judgment of conviction of specified types by adding the necessary post-release control provisions to a defendant's sentence while that defendant is still in prison. As of this writing, the potential fiscal effect on any given county criminal justice system is uncertain.

I. Harassment with a Bodily Substance and Post-release Control

Detailed Fiscal Analysis

For the purposes of this section of the fiscal analysis, the bill most notably:

- Renames the offense "harassment by an inmate" as "harassment with a bodily substance."
- Expands the renamed offense to additionally prohibit: (1) a person from causing or attempting to cause a "law enforcement officer" to come into contact with a bodily substance, a violation of which is a felony of the fifth degree under current law, and (2) a person with knowledge of certain health conditions from causing or attempting to cause "any person" to come into contact with a bodily substance, a violation of which is a felony of the third degree under current law.
- Addresses post-release control notification matters that were the subject of the Ohio Supreme Court's 2006 ruling in *Hernandez v. Kelly*.
- Declares an emergency, but specifies that the provisions regarding the offense of "harassment with a bodily substance" are to take effect 90 days after the bill's effective date.

Harassment with a bodily substance charges

Based on LSC fiscal staff's research, it seems most likely that a violation of the renamed and expanded harassment offense would most likely occur under a circumstance in which an individual was already facing arrest and prosecution. Such circumstances that jump readily to mind would be emotionally charged environments tied to disorderly conduct, resisting arrest, domestic violence, assault, or operating a motor vehicle while under the

influence. Thus, rather than creating new criminal cases, arguably, the bill's expanded prohibitions will primarily permit a prosecuting attorney to stack more charges against an individual and possibly secure a more serious punishment than might otherwise have occurred under current law.

Local fiscal effects

Criminal cases generally

The bill's harassment provisions may affect county and municipal criminal justice systems in at least two ways. First, some persons whose criminal conduct would have been processed as a misdemeanor may face the possibility that a similar case in the future could be elevated to a felony. Second, some offenders who would likely have been prosecuted and sanctioned under existing law for a felony offense could face a potentially more serious punishment. As of this writing, it appears that the number of criminal cases that could be affected in either manner in any given local criminal justice system annually is likely to be relatively small.

Criminal justice system expenditures

One notable local effect of the bill's harassment provisions may be to shift a criminal case that would have been handled by a municipal court or a county court as a misdemeanor under existing law to a court of common pleas where such a case would be handled as a felony and the offender could be subjected to more serious sanctions. As a result, municipalities may shed some of their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning certain offenders. Conversely, counties could experience an increase in their annual criminal justice system expenditures, as felonies are typically more time-consuming and expensive to resolve and the local sanctioning costs can be higher as well.

The number of offenders, however, that could be affected in this manner in any given county or municipal criminal justice system annually appears likely to be relatively small. Assuming that were true, then any decrease in the annual operating costs of any given municipal criminal justice system and any related increase in the annual operating costs of any given county criminal justice system seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal expenditure increase or decrease means an estimated cost or reduction of no more than \$5,000 for any affected county or municipal criminal justice system per year.

Court cost and fine revenues

As noted, one effect of the bill's harassment provisions may be to shift certain cases handled by county courts and municipal courts (which handle misdemeanors) into courts of common pleas (which handle felonies), which creates a potential loss of court cost and fine revenue for municipalities. Conversely, it creates the possibility that counties may gain court cost and fine revenue. It is also possible that offenders may be convicted of a more serious felony offense and subsequently fined higher amounts than might otherwise have been the case under current law and sentencing practices. As the number of affected criminal cases appears likely to be relatively small, the amount of annual court cost and fine revenue that municipalities might lose and counties might gain appears likely to be no more than minimal. For the purposes of this fiscal analysis, minimal in the context of revenues means an estimated monetary gain or loss of no more than \$5,000 per year for any affected local jurisdiction.

Testing costs

Relative to the offense of harassment with a bodily substance, a person can be required to submit to, and pay for, the appropriate test(s) under current law. If the person is unable to pay, then the jurisdiction with custody of the person is charged for the cost of the test(s). Thus, as a result of the bill's expanded prohibitions, additional persons may be charged with the offense of harassment with a bodily substance and be required to submit to, and pay for, the appropriate test(s). As of this writing, however, LSC fiscal staff has not collected any information suggesting that there will be a noticeable increase in the number of additional persons that might be charged, tested, and determined to be unable to pay the testing costs in any given local criminal justice system. Assuming that were true, then any affected county or municipal criminal justice system appears unlikely to experience a problematic increase in testing costs.

State fiscal effects

Incarceration expenditures

It is also possible as a result of the bill's harassment provisions that, in the future: (1) offenders that might not otherwise have been prison-bound under current law and sentencing practices may be sentenced to a prison term, and (2) offenders that would have been prison-bound under current law and sentencing practices may be sentenced to a longer prison term. Assuming all other conditions remain the same, either outcome theoretically at least increases the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs. As the number of offenders that might be affected in either manner annually appears likely to be relatively small, any related increase in DRC's annual incarceration costs would be minimal at most. For the purposes of this fiscal analysis, minimal means an estimated cost of less than \$100,000 per year for the state.

Court cost revenues

If, as a result of a violation of the bill's harassment provisions, an offender is convicted of a felony offense rather than a misdemeanor offense, then the state may gain locally collected court cost revenues that are deposited to the credit of the Victims of Crime/Reparations Fund (Fund 402). As the number of offenders that could be affected in this manner appears likely to be relatively small, the amount of court cost money that Fund 402 may gain annually appears likely to be negligible. For the purposes of this fiscal analysis, "negligible" means an estimated revenue gain of less than \$1,000 per year. It is also important to note that collecting court costs and fines from certain offenders can be problematic, especially in light of the fact that many are unable or unwilling to pay.

Sentences and fines generally

Table 1 below summarizes the existing sentences and fines, unchanged by the bill, for violating felony offenses generally. Under current law, depending upon the circumstances, a violation of the existing “harassment by an inmate” prohibitions is either a felony of the third or fifth degree. Under the bill, depending upon the circumstances, a violation of the renamed “harassment with a bodily substance” prohibition is either a felony of the third or fifth degree, with their respective sentences and fines noted in the shaded columns of Table 1.

Table 1 Existing Sentences and Fines for Felonies and Misdemeanors Generally		
Offense Level	Fine	Term of Incarceration
Felony of the 1st degree	Up to \$20,000	3, 4, 5, 6, 7, 8, 9 or 10 years definite prison term
Felony of the 2nd degree	Up to \$15,000	2, 3, 4, 5, 6, 7, or 8 years definite prison term
Felony of the 3rd degree	Up to \$10,000	1, 2, 3, 4, or 5 years definite prison term
Felony of the 4th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months definite prison term
Felony of the 5th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term

Sentencing and post-release control notification

The bill responds to a 2006 ruling by the Ohio Supreme Court in the case of *Hernandez v. Kelly*. In this case, the Supreme Court ruled that the inmate in question was entitled to release from prison and from any further post-release control because the trial court did not notify him at his sentencing hearing that he would be subject to post-release control and did not incorporate post-release control into its sentencing entry.

According to staff of DRC’s Adult Parole Authority (APA), as a result of this decision, approximately 365 offenders released from prison since the beginning of 2006 are not subject to post-release control. This ruling has created what might perhaps be best viewed as a temporary, one-time reduction in the number of offenders being supervised in the community by the APA from what that number of supervised offenders might otherwise have been under current law and practice. Arguably, the APA may realize some savings relative to its expected level of community supervision expenditures, but LSC fiscal staff is unable to quantify the magnitude as of this time.

The bill’s post-release control provisions essentially specify that, regardless of whether the court imposed the prison term prior to, on, or after its effective date, the failure of the court to take certain actions has no affect on the mandatory period of post-release control that is required of the offender or the Parole Board’s authority to impose a prison term on the offender for a post-release control violation. The practical effect is to return the offender supervision workload and related expenditures to the levels that the APA anticipated prior to the Supreme Court ruling.

Nunc pro tunc orders

The bill permits the sentencing court to issue *nunc pro tunc* orders to make a correction to the original sentence by adding the necessary post-release control provisions to a defendant's sentence while that defendant is still in prison. Before such an order can be issued, however, the court must hold a hearing. The county prosecutor is permitted to make a statement. The offender is permitted to be physically present, but upon a motion of the court, the county prosecutor, or court may appear by video-conferencing equipment. The bill is silent as to whether: (1) the offender would be entitled to counsel, and (2) DRC or the county sheriff would be responsible for transporting the offender to and from prison. As of this writing, the potential fiscal effect on county criminal justice systems and DRC is uncertain.

**II. OVI Suspensions and Juvenile Trafficking
State Fiscal Highlights**

STATE FUND	FY 2007	FY 2008	FUTURE YEARS
General Revenue Fund (GRF)			
Revenues	Potential, minimal at most, increase in fine and court cost revenues	Potential, minimal at most, increase in fine and court cost revenues	Potential, minimal at most, increase in fine and court cost revenues
Expenditures	Potential, minimal at most, increase in incarceration costs	Potential, minimal at most, increase in incarceration costs	Potential, minimal at most, increase in incarceration costs
Victims of Crime/Reparations Fund (Fund 402)			
Revenues	Factors increasing and decreasing revenues with net effect uncertain	Factors increasing and decreasing revenues with net effect uncertain	Factors increasing and decreasing revenues with net effect uncertain
Expenditures	Magnitude of effect, if any, not readily apparent	Magnitude of effect, if any, not readily apparent	Magnitude of effect, if any, not readily apparent
Other State Funds*			
Revenues	Potential loss of up to \$2.5 million	Potential loss of up to \$2.5 million	Potential loss of up to \$2.5 million
Expenditures	Potential reduction, commensurate with magnitude of revenue loss	Potential reduction, commensurate with magnitude of revenue loss	Potential reduction, commensurate with magnitude of revenue loss

Note: The state fiscal year is July 1 through June 30. For example, FY 2007 is July 1, 2006 – June 30, 2007.

*The other state funds affected by the bill are noted in Table 2 of the detailed fiscal analysis.

- **GRF fine revenues.** Based on the expectation that the bill would create some increase in OVI-related convictions, the total annual amount of additional revenue from new OVI convictions would likely increase. The state GRF would receive 20% of the additional fine revenues collected annually, with balance going to counties and municipalities.
- **Court cost revenues.** The vast majority of OVI convictions are misdemeanors. In addition to fine revenues, state court costs of \$24 per misdemeanor are also imposed. Fifteen dollars of the court costs go to the GRF and the remaining \$9 goes to the Victims of Crime/Reparations Fund (Fund 402). State court costs for a felony conviction total \$45, however, this represents a much smaller number of cases since most convictions are misdemeanors. Although LSC fiscal staff does not have any exact data on the percentage of felony versus misdemeanor OVI convictions, we do know that the percent OVI felonies is very small. The total court cost revenue generated from the additional OVI-related convictions would not likely exceed minimal, with purposes of this analysis would be an estimated annual gain of less than \$100,000 statewide.
- **Incarceration costs.** For felony OVI convictions at the “high-end” tier of alcohol concentration, current law requires a minimum 120 days of either incarceration or imprisonment in the Department of Rehabilitation and Correction (DRC). Information obtained from DRC indicates that the incarceration rate for OVI offenses is about 0.25% of convictions. Given the expectation that the bill will create some increase, of unknown magnitude, in OVI convictions, the most likely possible annual increase in prison-bound offenders would be less than one. This would result in not more than a minimal increase in DRC’s GRF incarceration costs.
- **Reinstatement fees.** Six additional state funds, detailed in Table 2 and excluding Fund 402, may experience a net annual loss of revenue totaling up to \$1 million as the result of fewer reinstatements of administratively suspended driver’s licenses.

Local Impact Statement

LOCAL GOVERNMENT		FY 2007	FY 2008	FUTURE YEARS
Counties and Municipalities				
Revenues	Potential gain in fines, possibly exceeding minimal in some local jurisdictions		Potential gain in fines, possibly exceeding minimal in some local jurisdictions	Potential gain in fines, possibly exceeding minimal in some local jurisdictions
Expenditures	Potential increase in incarceration costs, possibly exceeding minimal in some local jurisdictions		Potential increase in incarceration costs, possibly exceeding minimal in some local jurisdictions	Potential increase in incarceration costs, possibly exceeding minimal in some local jurisdictions

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Additional fine revenues.** Based on the expected increase in new convictions, LSC fiscal staff estimates corresponding increases of annual fine revenue which at more than \$400 average per fine, could exceed the minimal threshold of \$5,000. These fine revenues would be split among the state and local jurisdictions, whereby the counties statewide would receive 42%, municipalities statewide would receive 38%, and the state would collect the remainder 20%.
- **Additional OVI “low-end BAC tier” expenditures.** Recent changes in the OVI Law have increased the jail terms for convictions on offenses in the “high-end” tier of alcohol concentration. For the estimated additional convictions on OVI violations at the “low-end” tier, jail terms would essentially remain the same as they were before these changes were made and the two-tiered structure was created. The average jail time for these lower tier convictions is 9.2 days. If just 10 additional individuals, in any given county, are convicted and spend an average of 9.2 days in jail at about \$60 per day, additional annual local incarceration expenditures would exceed the minimal threshold, which for the counties is \$5,000.
- **Additional OVI “high-end BAC tier” expenditures.** This analysis has also estimated there would likely be some additional convictions at the “high-end” tier of alcohol concentration. Recent changes to the OVI Law essentially double the jail time for “high-end” tier OVI convictions. Data indicating average jail sentences have been affected does not yet exist. For purposes of estimation, we know that 9.2 days is the average jail term for all convictions. Since the jail terms have doubled under the new sentencing structure, it would not be unreasonable to expect the average to double as well. If just 5 new “high-end” tier convictions occur under the bill, in any given county, and they receive an average jail term of 18.4 days at \$60 per day, total additional annual statewide cost for local incarceration would exceed the minimal threshold, which for the counties is \$5,000.
- **County detention and drug treatment costs.** As of this writing, LSC fiscal staff has not located any data that would permit one to reliably estimate the number of juveniles that might be affected annually statewide by the bill’s drug offense-related provisions or to determine how the dispositions ordered by various juvenile courts might differ from what those dispositions might otherwise have been the case under current law and practice. Thus, whether the provisions may negatively affect local jurisdictions, specifically counties and their annual detention and drug treatment costs, as well as the magnitude of potential expenditure increase, is uncertain.

II. OVI Suspensions and Juvenile Trafficking

Detailed Fiscal Analysis

Fiscally notable provisions

The bill makes changes to the provision in the state’s OVI Law that requires the suspension of the driver’s license of a person who is arrested for a state OVI, or equivalent, offense, and refuses to submit to a chemical test of a bodily substance. For the purposes of this fiscal analysis, the bill most

notably:

- Increases the length of the license suspension that is imposed under the Vehicle Implied Consent Law for those arrested on an OVI charge that refuse to submit to a chemical test.
- Extends the “lookback” period, from six to twenty years, during which time prior refusals are considered in determining the length of the suspension.
- Provides for consideration of prior related convictions in determining the length of suspension.
- Increases the charging level and penalties for the offenses of trafficking in marijuana and possession of marijuana when committed by a juvenile.

Current law

Under current law, any person who operates a vehicle is deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine to determine the level of alcohol, drug, or alcohol and drug intoxication if arrested for the offense of state OVI or a related offense. The chemical test or tests are administered at the request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle while committing any specified offenses or violations. Before the arrested person may be requested to submit to the test, the arresting officer must read a statutorily specified form to the person that advises the person as to the ramifications of refusing to submit to a requested test and of taking a requested test and having a prohibited concentration of alcohol in the tested bodily substance. If an arrested person refuses to submit to the requested test, no test is administered, and the person is subject to an administrative license suspension (ALS) of their driver's license.

The normal suspension for a first time refusal, or one that exceeds the "lookback" period is a Class C suspension (a period of one year). If the person, within six years of the date of the refusal, had refused one previous request to consent to a chemical test, the suspension is a Class B suspension (a period of two years). If the person, within six years of the date of the refusal, had refused two previous requests to consent to a chemical test, the suspension is a Class A suspension (a period of three years). If the person, within six years of the date of the refusal, had refused three or more previous requests, the suspension is for five years.

Operation of the bill

From the fiscal perspective concerning drivers license suspensions, the bill most notably:

- Increases the length of the suspension that is imposed under the Vehicle Implied Consent Law upon a person who is arrested for the offense of state OVI or a related offense, and who refuses to submit to the requested chemical test of a bodily substance.
- Increases, from 6 years to 20 years, the "look back period" during which prior refusals are considered in determining the length of the suspension and provides for consideration of prior related convictions in determining the length of the suspension.
- Increases the license suspension of a person with one prior chemical test refusal or who had been convicted of or pleaded guilty to one state OVI, or other equivalent offense, within 20 years of the date of the second refusal, from Class C (a period of one year) to Class A (a period of three years).
- Specifies that, if a person refuses a chemical test and within 20 years of that refusal the person refused two previous requests to consent to a chemical test or had been convicted of or pleaded guilty to two state OVIs, or other equivalent offenses, or any combination of the two, the suspension is for seven years (existing law requires a suspension of two years for one refusal within the prior six years).
- Specifies that, if a person refuses a chemical test and within 20 years of that refusal the person refused more than two previous requests to consent to a chemical test or had been convicted of or pleaded guilty to more than two state OVIs, or other equivalent offenses, or any combination of the two, the suspension is seven years plus three years for each refusal, conviction, or guilty plea in excess of the number of times specified in the immediately preceding dot point (existing law requires a suspension of three years for two prior refusals within the prior six years and a suspension of five years for three or more refusals within the prior six years).

New convictions

The specific areas of fiscal impact created by this bill are a direct function of the number of OVI arrests and the likely number of new convictions. Sources within the Department of Public Safety indicate that the annual OVI caseload is approximately 90,000 cases. Typically, about 30%, or 27,000, refuse to submit to any type of chemical test. Those refusing face an automatic administrative license suspension (ALS) regardless of whether or not they are convicted of the OVI charge. For those individuals that submit to a chemical test, the rate of conviction is about 74%, and for those individuals refusing to be tested, the rate of conviction is 63.7%.

If the bill required chemical testing, which it currently does not, the maximum number of likely new convictions would be a function of the difference between these two conviction rates, or 10.3%. In other words, 10.3% more of those refusing to submit to a chemical test would likely be convicted of an OVI offense.

Under the bill, a person still has the option to refuse to submit to chemical testing, although the person would face a longer driver's license suspension period. By increasing the ALS, some persons will undoubtedly conclude that the prudent course of action is to now submit to the chemical test. It is also reasonable to conclude that, despite the changes in the bill, some individuals arrested for an OVI offense will continue to refuse chemical testing. It is, therefore, difficult to quantify the number of additional OVI convictions that might result from the bill, although there will certainly be some new convictions based on the differences in the conviction rates as outlined above.

Recent OVI law changes

Amended Substitute Senate Bill 22 of the 123rd General Assembly established new high- and low-end tiers for measuring an individual's level of intoxication, as well as increased penalties. Additionally, Am. Sub. H.B. 87 of the 125th General Assembly lowered the threshold for OVI to .08 BAC (blood alcohol concentration). Table 1 below describes that two-tiered structure and the lower BAC level.

Category	Low-End Tiers	High-End Tiers
Blood	Between .08 of 1% or more by weight of alcohol in blood	.17 of 1% or more by weight of alcohol in blood
Breath	.08 of one gram or more by weight if alcohol per 210 liters of breath	.17 of one gram or more by weight of alcohol per 210 liters of breath
Urine	.11 of one gram or more by weight per 100 milliliters of urine	.238 of one gram or more by weight per 100 milliliters of urine

An individual convicted of OVI while testing in the "high-end" tier of alcohol concentration faces more severe penalties, which predominately involves a longer jail or prison sentence. This presents a difficult measurement problem in terms of determining the percentage of those who take the chemical test that register results ranging within the "high-end" tier. There is no readily accessible data source cross-referencing arrest data with specific alcohol concentration levels. Information obtained through conversations with a limited number of criminal justice practitioners suggests it would be very reasonable for LSC fiscal staff to assume that at least 50% of those convicted of OVI, if not more, would register levels of alcohol concentration placing them in the new "high-end" tiers created by Am. Sub. S.B. 22. Based on this assumption, there would likely be some additional annual OVI convictions, of unknown magnitude, that LSC fiscal staff estimate will occur as a result of this bill (S.B. 141), about half of which would be in the "low-end" tier of alcohol concentration and the other half would be in the "high-end" tier.

State revenues

Fines. The recent changes to the OVI Law enacted by Am. Sub. S.B. 22 doubled the potential length of incarceration, but did not affect the range of fines that can be imposed. Thus, at a minimum, the fine revenue and distribution for "high-end" tier violations would be the same as for "low-end" tier violations. Since the bill will result in some level of increase in OVI-related convictions, there will be new fine revenues collected from the additional convictions. Fine revenue collected in these cases is distributed among the state and local governments with about 20% going to the state, 42% to the counties, and 38% to the municipalities.

Court costs. The vast majority of OVI convictions are misdemeanors. In addition to fine revenues, state court costs of \$24 per misdemeanor case are also imposed. Fifteen dollars of the court costs go to the GRF and the remaining \$9 goes to the Victims of Crime/Reparations Fund (Fund 402). The state court costs for a felony conviction total \$45, however, this represents a much smaller number of cases since most convictions are misdemeanors. Although LSC fiscal staff does not have any exact data on the percentage of felony versus misdemeanor OVI convictions, we do know that the percentage of OVI felonies is very small. The total court cost revenue generated from the additional OVI-related convictions would not likely exceed minimal, which for purposes of this analysis would be an estimated increase of less than \$100,000 annually statewide.

Reinstatement fees. Those arrested for an OVI or related charge that refuse a chemical test face an automatic administrative license suspension (ALS). Those convicted of OVI also face an ALS. The reinstatement fee for a suspended driver's license resulting from an OVI-related infraction is \$425.

Annually, the approximately 27,000 individuals refusing to submit to a chemical test, as well as the 46,620 who do submit and are convicted, constitute a combined group of 73,620 that must pay the \$425 for a reinstated license. The approximate total annual reinstated license revenue generated for the state is approximately \$31,288,500 (73,620 x \$425).

If this bill is enacted, and, for the sake of argument, we assume everyone (100%) submits to the chemical test, the above mentioned conviction rate of 74% and a total of about 90,000 OVI cases will yield a group of 66,600, convicted of the OVI offense, that must pay to reinstate their licenses. This would generate approximately \$28,305,000, which is an annual revenue loss of \$2,983,500 compared to collections under current law and practice, and is due to the fact there would be 7,020 fewer license reinstatements. Although the bill creates an incentive to cooperate with law enforcement authorities and submit to a chemical test, arguably not everyone will do so. The maximum possible ALS reinstatement fee revenue loss would be approximately \$2,983,500, which would occur if everyone arrested ultimately submitted to the chemical testing. As we are asserting that some percentage of individuals arrested for an OVI-related offense would likely continue to refuse chemical testing, the actual ALS reinstatement fee revenue loss would range somewhere between \$0 and up to \$2,983,500 annually.

This potential loss of annual ALS reinstatement fee revenue would be distributed among several agencies and six specific funds as outlined in Table 2 attached.

State expenditures

Incarceration costs. For felony OVI convictions at the "high-end" tier of alcohol concentration, current law requires a minimum 120 days of either local incarceration or imprisonment in the Department of Rehabilitation and Correction (DRC). Information obtained from DRC indicates that the incarceration rate for OVI offenses is about 0.25% of convictions. Given the expectation that the bill will create some increase, of unknown magnitude, in OVI-related convictions, the most likely possible annual increase in prison-bound offenders would be less than one. This would result in not more than a minimal yearly increase in DRC's GRF incarceration costs.

Local revenues

Fines. Based on the expected increase in new convictions, LSC fiscal staff estimates a corresponding increase in annual fine revenues, which at more than \$400 average per fine, could exceed the minimal local threshold of \$5,000. These fine revenues would be split among the state and local jurisdictions, whereby the counties statewide would receive 42%, municipalities statewide would receive 38%, and the state would collect the remaining 20%.

Local expenditures

Incarceration costs. As previously referenced in this analysis, recent changes in the OVI Law have increased the jail terms for convictions on offenses involving the “high-end” tier of alcohol concentration. For the estimated additional convictions on OVI violations at the “low-end” tier, jail terms would essentially remain the same as they were before these changes were made and the two-tiered structure was created. The average jail time for these lower tier OVI convictions is 9.2 days. If just 10 additional individuals, in any given county, are convicted and spend an average of 9.2 days in jail at about \$60 per day, the additional annual local incarceration expenditures would exceed the minimal threshold, which for the counties is \$5,000.

This analysis has also estimated there would likely be some additional convictions at the “high-end” tier of alcohol concentration. Recent changes to the OVI Law essentially double the jail time for “high-end” tier OVI convictions. Data indicating how average jail sentences have been affected does not yet exist. For purposes of estimation, we know that 9.2 days is the average jail term for all other convictions. Since the jail terms have doubled under the new sentencing structure, it would not be unreasonable to expect the average to double as well. As such, if just 5 new “high-end” tier convictions occur under the bill, in any given county, and they receive an average jail term of 18.4 days at \$60 per day, the total additional annual statewide cost for local incarceration would exceed the minimal threshold, which for the counties is \$5,000.

The combined fiscal effect of jail terms for all of the likely additional convictions under the bill could result in additional annual statewide local jail costs that would likely exceed the minimal threshold in some counties.

Trafficking and possession of marijuana by a juvenile

Under the bill, if a juvenile is adjudicated delinquent for the offenses of trafficking in, or possession of, marijuana, the juvenile court is required to make an order of disposition that does either or both of the following, for a delinquent child not committed to the custody of the Department of Youth Services:

- Place the juvenile in a detention facility or district detention facility for a minimum term ranging from 3 days to 60 days depending on the severity of the offense and the existence of prior offenses (current law, unchanged by the bill, sets the maximum term in such a facility at 90 days).
- Require community-based drug assessment and counseling in a drug treatment program which would include a period of probation.

The bill also clarifies that a juvenile who commits a minor misdemeanor is eligible for adjudication as a delinquent child, and therefore, eligible for any disposition appropriate for those offenses.

As of this writing, LSC fiscal staff has not located any data that would permit one to reliably estimate the number of juveniles that might be affected annually statewide by the bill’s drug offense-related provisions or to determine how the dispositions ordered by various juvenile courts might differ from what those dispositions might otherwise have been the case under current law and practice. Although the Department of Youth Services collects dispositional data, it appears that one cannot glean the level of detail necessary for estimating the local fiscal consequences of the bill’s drug-related offense provisions. Thus, whether these provisions may negatively affect local jurisdictions, specifically counties and their annual detention and drug treatment costs, as well as the magnitude of any potential expenditure increase, is uncertain.

LSC fiscal staff: Joseph Rogers, Senior Budget Analyst

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Table 2: Annual State Fiscal Effects by Fund

STATE FUNDS	FUTURE YEARS
State Bureau of Motor Vehicles Fund (Fund 4W4)	
Revenues	Potential loss of up to around \$211,829
Expenditures	- 0 -
Indigent Drivers Alcohol Treatment Fund (Fund 049)	
Revenues	Potential loss of up to around \$262,548
Expenditures	- 0 -
Victims of Crime/Reparations Fund (Fund 402)	
Revenues	Factors increasing and decreasing revenues with net effect uncertain
Expenditures	Magnitude of effect, if any, not readily apparent
Statewide Treatment and Prevention Fund (Fund 475)	
Revenues	Potential loss of up to around \$790,628
Expenditures	- 0 -
Services for Rehabilitation Fund (Fund 4LI)	
Revenues	Potential loss of up to around \$525,096

Expenditures	- 0 -
Drug Abuse Resistance Education Programs Fund (Fund 4L6)	
Revenues	Potential loss of up to around \$525,096
Expenditures	- 0 -
Trauma & Emergency Medical Services Grants Fund (Fund 83P)	
Revenues	Potential loss of up to around \$140,225
Expenditures	- 0 -