

incarceration costs will be higher than \$5.4 million, but we are uncertain as to what that larger number might be at this time.

- It is possible that the bill may increase the cost of handling OMVI matters, particularly with respect to sanctioning and incarceration, such that local jurisdictions may opt to charge and convict under the Ohio Revised Code and less frequently utilize municipal ordinances. The practical effect of this would be to ship criminal cases, and their associated court cost and fine revenue and adjudication, prosecution, indigent defense (if applicable), and sanctioning costs from municipal and county courts to common pleas courts. This potential change in local OMVI charging patterns, however, would not, in our opinion, be a direct and immediate effect of the bill. How charging is done is a permissible local prerogative. It needs to be noted though, that the bill might in time over certain places alter that local calculus, thus triggering the transfer of handling some OMVI cases from municipalities to counties.

Detailed Fiscal Analysis

Overview

The bill modifies existing prohibitions that constitute the offense of OMVI by adding three new “high-end” tiers of alcohol concentration to the prohibitions and provides increased periods of incarceration for persons who commit the offense in violation of the new “high-end” tiers of alcohol concentration. The existing tiers that constitute the offense of OMVI as well as the three new high-end tiers of alcohol concentration that would trigger increased periods of incarceration are depicted in Table 1 immediately below.

Table 1: Tiers of Alcohol Concentration

Category	Existing Tiers	“High-End” Tiers
Blood	Between .10 of 1% or more by weight of alcohol in blood	.17 of 1% or more by weight of alcohol in blood
Breath	.10 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	.14 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

As noted, the bill also provides for increased periods of required incarceration for persons who commit OMVI in violation of these new “high-end” tiers of alcohol concentration. In Table 2 immediately below, we have summarized the key differences between the minimum periods of incarceration under existing OMVI law and the enhanced minimum periods of incarceration for persons in violation of the new “high-end” tiers created by the bill. Without getting into the nuances or complexities of the law that permit courts some flexibility in imposing alternative forms of punishment that may eliminate or minimize periods of incarceration, we have attempted to very simply summarize what we believe is the core difference between current law and the bill. In essence, for certain offenders, as the reader can plainly see, the bill will more or less double their lengths of incarceration, irrespective of whether a particular conviction involves a stay in a local jail or a state prison.

Table 2: Periods of Incarceration

Number of Convictions (in six-years)	Period of Incarceration (current minimum in days)	“High-Tiers” (required minimum in days)
First	3	6
Second	10	20
Third	30	60
Fourth or more	60 local (1 st time felony) or 60 prison (subsequent)	120 local (1 st time felony) 120 prison (subsequent)

State Expenditures

From data provided by the Department of Rehabilitation and Correction (DRC), it seems pretty clear that this bill would have affected only a handful of offenders being sentenced to prison annually under the state's current OMVI law. Specifically, of those OMVI offenders sentenced to prison, all but three were serving lengths of stay that already meet or exceed the required 120-day minimum called for under the bill. The three offenders not sentenced to prison stays of 120 days or more were serving the 60-day mandatory minimum required under current law. Thus, depending upon their alcohol concentrations, the bill would have doubled the length of stay in prison from 60 days to 120 days for, at most, three offenders.

Thus, relative to its effect on the state's prison system, LBO believes that this bill will affect no more than a handful of prison-bound offenders annually by extending their lengths of stay by at least another 60 days. Given DRC's estimated FY 1999 GRF inmate per diem of \$50.17, LBO estimates that the annual increase in their incarceration costs will be no more than \$10,000 ($\$50.17 \times 3 \text{ offenders} \times 60 \text{ additional days}$)

Local Expenditures

The bill's most profound fiscal effects will be on counties and municipalities by most likely dramatically increasing annual incarceration costs, as lengths of stay in local jails will double given what we know about current OMVI sentencing practice around the state. How did we arrive at that conclusion?

Our starting point was with the number of persons who are convicted annually of OMVI violations. The Department of Public Safety provided us with those statewide numbers for calendar years 1992 through 1998. Unfortunately, at this time, we do not have any way that permits us to cleanly discern how many total OMVI convictions a given offender has. All we do know is how many offenders were convicted of multiple OMVI violations within a single calendar year.

We next moved to levels of alcohol concentration. Based solely on conversations with a limited number of criminal justice practitioners, it seemed very reasonable for us to assume that at least 50 percent of those convicted of OMVI, if not more, would register levels of alcohol concentration placing them in the new "high-end" tiers created by the bill.

From there, we turned to investigating local sentencing practices so that we might be able to discern what effect the bill's increased levels of incarceration could have on counties and municipalities. This was a considerably more problematic exercise, as there is no statewide database available that breaks out annual OMVI convictions telling us the number of times that those individuals have been convicted and what their lengths of stay were in local incarceration. Although more work needs to be done on this matter, our conversations with local criminal justice practitioners suggested a general pattern. One, however, has to be exceedingly cautious about generalizing with regard to local sentencing practices statewide from very limited data.

That said, in the matter of first time offenders, we learned that in many local jurisdictions courts are waiving the current mandatory three-day minimum and requiring offenders to attend a certified drivers' intervention program in lieu of local incarceration. As previously stated, the

data available to us at this time does not cleanly distinguish OMVI offenders by their number of prior convictions. Thus, we have opted to treat all OMVI offenders in a given year as first time offenders, which will result, in our minds at least, in an underestimation of the increased local incarceration costs that counties and municipalities will face as a result of the bill.

Taking all of this admittedly incomplete data into account, we generated a “minimalist” local incarceration effects scenario, which is displayed in Table 3 immediately below and assumes that all OMVI offenders were first timers. We know that this is not the case, and that there are a number of offenders around the state who have been convicted of two or more OMVI violations within the last seven calendar years. Thus, this scenario has to, in effect, underestimate the additional local incarceration costs, but by how much is uncertain at this time.

Table 3: LBO’s “Minimalist” Annual Local Incarceration Effects Scenario

Annual Average OMVI Convictions	Assumption of ½ offenders	Per Diem Charge	Minimal Additional Incarceration Days	Total Annual Cost
60,493	30,247	\$60.00	3	\$5,444,460

Given what we know at this time and our previously stated assumptions, LBO’s best estimate is that the bill will increase annual local incarceration costs by at least \$5.4 million. What we are then reticent to even attempt at this time is to ascertain how that increased annual incarceration cost might be spread between counties and municipalities statewide. We do know that, relative to OMVI offenders, 60 percent are charged under state law, while the remainder, 40 percent, are charged for violating a municipal ordinance. We do not believe, however, that one can then make the inferential leap from charging data to conviction data and assume that 60 percent of the increased incarceration burden will fall on counties and 40 percent of the increased incarceration burden will fall on municipalities.

Let’s walk the reader through the above table. First, we calculated the average number of offenders who were convicted of an OMVI violation between calendar year 1992 and 1998. If the reader steps further into the above table, we then have taken our assumption that 50 percent of those convicted of OMVI will register alcohol concentration levels that land them in the bill’s new “high-end” tiers. Then, it became a matter of estimating what this would cost counties and municipalities given our belief that the bill will increase lengths of stay in local incarceration, given what we know at this time about various sentencing practices.

Currently, the average daily cost of incarcerating an offender in a local jail is around \$60, with the range running from as low as \$23 per day to as high as \$160 per day. We used that \$60 average to make what has to be seen as a low-ball calculation of the bill’s effect on local incarceration costs. We assumed that everyone was a first timer and would receive at least an additional three days of local incarceration.

We do feel compelled to offer a less clear, but possible, fiscal effect of the bill. It is possible that the bill may increase the cost of handling OMVI matters, particular with respect sanctioning and incarceration, such that local jurisdictions may opt to charge and convict under the Ohio Revised Code and less frequently utilize municipal ordinances. The practical effect of this would be to ship criminal cases, and their associated court cost and fine revenue and adjudication, prosecution, indigent defense (if applicable), and sanctioning costs from municipal and county courts to common pleas courts. This would mean that certain municipalities lose

annual revenue, but they also reduce annual criminal justice expenditures, with the latter possibly more than offsetting the lost revenue. On the flip side, certain counties would gain annual revenue and experience annual criminal justice expenditure increases, with the additional revenue most likely not coming anywhere near covering a given counties increased cost of doing business. This potential change in local OMVI charging patterns, however, would not, in our opinion, be a direct and immediate effect of the bill. How charging is done is a permissible local prerogative. It needs to be noted though, that the bill might over time, in certain places, alter that local calculus, thus triggering the transfer of handling some OMVI cases from municipalities to counties.

Revenue Generation

State Effects. Outside of doubling the mandatory minimum periods of incarceration, the bill does not change any other sanction provided under existing law for a person who is convicted of OMVI. Thus, LBO believes that the bill will have no direct and immediate fiscal effect on state revenues.

Local Effects. Outside of doubling the mandatory minimum periods of incarceration, the bill does not change any other sanction provided under existing law for a person who is convicted of OMVI. Thus, LBO believes, as was just noted in relation to the bill's fiscal effects on state revenue, that the bill will have no direct and immediate on municipal and county revenue. That said, as also previously discussed, the bill might, in time and in some places, alter existing charging practices relative to OMVI, thus moving the handling of some OMVI matters from municipalities to counties. If this were to happen, those municipalities would in effect surrender some amount of existing annual court cost and fine revenue and the counties in their jurisdictions would gain that revenue.

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