Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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STATUS: **As Reported by House Criminal Justice** SPONSOR: **Sen. Grendell**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **OVI-related prohibitions and penalties**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	Up to $84,405 or more annual gain
Expenditures	Minimal, at most, annual incarceration cost increase
State Highway Safety Fund (Fund 036)	
Revenues	Gain in court costs, annual magnitude uncertain
Expenditures	One-time $82,500 cost and $100,000 ongoing expenses to maintain state registry
Indigent Drivers Interlock and Alcohol Monitoring Fund (New Fund)	
Revenues	Potential annual increase up to around $1,750,000
Expenditures	Potential annual increase, up to available revenue
Indigent Drivers Alcohol Treatment Fund (Fund 049)	
Revenues	Factors increasing and decreasing revenues, with net gain, annual magnitude uncertain
Expenditures	Potential increase of up to around $2.4 million annually or available new revenue
Victims of Crime/Reparations Fund (Fund 402)	
Revenues	Factors increasing and decreasing revenues, with net annual effect uncertain
Expenditures	- 0 -
Other State Funds*	
Revenues	Likely loss of around $94,525 annually
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.
* The other state funds affected by the bill are noted in Table 3 of the detailed fiscal analysis.

- ***GRF fine revenues from required submission to chemical testing.*** Information from the Department of Public Safety indicates that fines imposed for OVI-related convictions average $407.05, which means the total annual amount of fines imposed for an estimated 79 new OVI-related convictions annually would be $36,107. Factoring in a collection rate of about 60%, the gain in additional annual revenue would be $21,664. The state GRF would receive 20% of that total amount, or around $4,333 annually, in additional fine revenues from these new convictions arising out of the bill.

- ***GRF and Fund 402 court cost revenues.*** The vast majority of OVI-related convictions are misdemeanors. The bill will also produce some new misdemeanor convictions related to OVI offenders driving vehicles that have been granted immobilization waivers. In addition to fine revenues, state court costs of $24 per 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 annual additional state court cost revenue generated from the 79 additional OVI-related convictions totals $1,896, of which $1,185 goes to the GRF and $711 goes to Fund 402. The state court costs for felony convictions 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-related convictions, we do know that the percentage of OVI-related felonies is very small. It is also unclear how much additional court cost revenue might be generated from the new misdemeanor offense related to driving a vehicle that was granted an immobilization waiver.

- ***Incarceration costs.*** As a result of the additional OVI-related convictions stemming from the bill, LSC fiscal staff estimates that very few, if any, additional offenders might be sentenced to prison annually. This means that the potential increase in the Department of Rehabilitation and Correction's annual incarceration cost would be minimal at most, if that.

- ***License reinstatement fees.*** Six additional state funds, detailed in Table 3, will likely experience a net annual loss of revenue totaling $94,525 as the result of 199 fewer reinstatements of administratively suspended driver licenses.

- ***Indigent Drivers Interlock and Alcohol Monitoring Fund (New Fund).*** The bill increases the minimum mandatory fine assessed against convicted OVI-related offenders, regardless of the number of prior offenses, by $50, and directs the $50 increase to the court's special projects fund. If the court does not have a special projects fund, the $50 increase is directed to the Indigent Drivers Interlock and Alcohol Monitoring Fund, which the bill creates. This provision could generate up to around $1,750,000 annually to be retained by the court or distributed by the state. These moneys are to be used to pay the cost of an immobilizing or disabling device, including a certified ignition interlock device or an alcohol-monitoring device, to be used by an offender determined by the court to be indigent. Whether the indigent drivers interlock and alcohol monitoring funds will be sufficient to offset the additional ignition interlock and continuous alcohol monitoring expenses created by the bill is uncertain as of this writing.

- ***Indigent Drivers Alcohol Treatment Fund expenditures.*** The bill potentially increases local indigent alcohol and other drug treatment-related costs by up to around $2,371,000 annually, which is based on around $571,000 for new assessments, and treatment-related costs ranging somewhere between $960,000 and $1,800,000. Presumably, if the cash were available, these statewide local costs would be covered by additional moneys to be distributed from the state's existing Indigent Drivers Alcohol Treatment Fund (Fund 049), which is administered by the Department of Alcohol and Drug Addiction Services.

- ***Indigent Drivers Alcohol Treatment Fund revenues.*** The bill generates additional revenue for the state's existing Indigent Drivers Alcohol Treatment Fund (Fund 049) from: (1) a $50 immobilization waiver fee, and (2) a licensing option for manufacturers of certified ignition interlock devices that includes a $100 annual license fee and 5% net profits fee. It is unclear how much additional revenue these provisions of the bill may generate. Whether the fund's revenues will be sufficient to offset the additional local assessment, treatment, and continuous alcohol monitoring expenses created by the bill is uncertain as of this writing.

- ***Department of Public Safety.*** The bill requires the Department of Public Safety to establish a state registry of Ohio's habitual OVI/OMWI offenders and an Internet database containing specified information. The ongoing operation of the database, as well as all of the data management functions, may actually necessitate the hiring of three new employees, at a total annual cost of around $100,000. In addition, one-time expenses totaling approximately $82,500 will be incurred to make necessary information technology (IT) infrastructure and programming changes. The bill creates an additional $2.50 court cost to be imposed on certain OVI-related offenders, directs the fee for deposit in the state's existing State Highway Safety Fund (Fund 036), and states that the Department of Public Safety is to use the fee for its costs associated with maintaining the offender registry. Whether this new revenue stream will be sufficient to completely offset the cost of operating and maintaining the offender registry is uncertain at this time.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 – FUTURE YEARS
County and Municipal Criminal Justice Systems generally	
Revenues	Potential annual gain in court costs and fines, likely to exceed minimal in certain local jurisdictions
Expenditures	Potential increase in offender processing and sanctioning costs, likely to exceed minimal in certain local jurisdictions
County and Municipal Indigent Drivers Alcohol Treatment Funds	
Revenues	Increase, annual magnitude uncertain
Expenditures	Potential increase of up to around $2.4 million annually
Local Indigent Drivers Interlock and Alcohol Monitoring Funds	
Revenues	Potential increase up to around $1,750,000 annually statewide, with magnitude dependent on the number of courts with a special projects fund
Expenditures	Increase, up to available new revenues
County and Municipal Special Court Funds	
Revenues	Potential gain from: (1) $50 increase to mandatory minimum penalty, and (2) new $2.50 court cost, annual magnitude uncertain
Expenditures	Potential increase to: (1) pay for monitoring of indigent offenders, and (2) modify and maintain clerks of courts' accounting systems

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

- ***Fine revenues related to mandatory chemical testing.*** Information from the Department of Public Safety indicates that fines imposed for OVI-related convictions average $407.05, which means the total annual amount of fines imposed for an estimated 79 new OVI-related convictions annually would be $36,107. Factoring in a collection rate of about 60%, the gain in additional annual revenue would be $21,664. These fine revenues would be split among the state and local jurisdictions. Counties statewide would receive 42%, or $9,099 annually, municipalities statewide would receive 38%, or $8,232 annually, and the state would collect the remaining 20%.

- ***Jail expenditures related to mandatory chemical testing.*** The combined fiscal effect of jail terms for all 79 additional OVI-related convictions under the bill could result in additional annual statewide local jail costs of approximately $64,584. Since about 60% of these cases are charged under state law and 40% under municipal ordinances, and assuming the conviction rates follow a similar proportion, counties statewide would incur approximately $38,750 of this annual total and municipalities statewide would incur the remaining $25,834 annually.

- ***Additional court cost directed to court's special projects funds.*** The bill permits the court to impose an additional $2.50 in court costs on certain OVI-related offenders, which, if imposed, must be deposited in the court's special projects fund. Presumably, any revenues collected in this special projects fund could be used to help defray any additional expenses that might be incurred by the clerk of courts to reprogram their computerized accounting systems in order to keep track of the bill's various revenue-generating changes.

- ***Mandatory fine increase.*** The bill increases the minimum mandatory fine assessed against convicted OVI-related offenders, regardless of the number of prior offenses, by $50, and directs the $50 increase to the court's special projects fund, if such a fund exists. If the particular court does not have a special projects fund, the $50 increase is directed to the state's Indigent Drivers Interlock and Alcohol Monitoring Fund, which is created by the bill. This provision could generate up to around $1,750,000 annually statewide to be retained by the courts and/or distributed by the state. These moneys are to be used to pay the cost of an immobilizing or disabling device, including a certified ignition interlock device or an alcohol-monitoring device, for use by an indigent offender. Moneys distributed by the state would be deposited in the appropriate county or municipal indigent drivers interlock and alcohol-monitoring fund, which the bill creates. Whether the revenues to be deposited in court special project funds and county or municipal indigent drivers interlock and alcohol-monitoring funds will be sufficient to offset the additional ignition interlock and continuous alcohol monitoring expenses created by the bill is uncertain as of this writing.

- ***County and municipal indigent drivers alcohol treatment funds.*** The revenue in the state's Indigent Drivers Alcohol Treatment Fund (Fund 049) is distributed to the county, juvenile, and municipal indigent driver alcohol treatment funds established at the county and municipal level to pay the treatment expenses for indigent offenders.

- ***Penalty for offender operating a vehicle in violation of an immobilization order.*** Presumably, offenders will violate this prohibition, the practical effect of which will be to create additional misdemeanor cases for county and municipal criminal justice systems to resolve. If this were to happen, then, theoretically at least, local criminal justice system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders would increase in any affected county or municipality. As the likely number of violations that may occur annually in any affected local jurisdiction is uncertain, any resulting increase in county and municipal criminal justice system expenditures is uncertain as well. Violations of this prohibition also create the potential for affected counties and municipalities to collect related court cost and fine revenues, the annual magnitude of which is uncertain.

Detailed Fiscal Analysis

Overview

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

- Requires certain repeat OVI-related offenders to submit to chemical testing.
- Increases the minimum mandatory fine for an offender convicted of state OVI-related offenses by $50 and directs this increase, as appropriate, to the court's special projects fund or the state Indigent Drivers Interlock and Alcohol Monitoring Fund, which the bill creates.
- Requires the court, in the case of certain repeat OVI-related offenders, to require the offender to be assessed by an alcohol and drug treatment program and to follow the treatment recommendations.
- Allows expenditures from a local alcohol treatment fund for the payment of the cost of an assessment for an offender who is ordered by the court to attend the assessment and is determined by the court to be unable to pay the cost of the assessment.
- Specifies, when certain repeat OVI-related offenders violate an ignition interlock requirement while exercising limited driving privileges, the court is permitted and/or required to order that such an offender submit to continuous alcohol monitoring.
- Requires the court generally impose a court cost of $2.50 upon an offender granted limited driving privileges requiring the use of an ignition interlock device or required to wear a remote alcohol monitor, directs the court cost to the state's existing State Highway Safety Fund (Fund 036), and permits the court to impose an additional court cost of $2.50 for deposit in the court's special projects fund.
- Requires manufacturers of certified ignition interlock devices to apply for and obtain a $100 license annually from the Department of Public Safety, requires licensed manufacturers to pay a fee equal to 5% of the net profit attributable to the annual sales of their certified ignition interlock devices to purchases in Ohio, and directs the license and net profit fees to the state's Indigent Drivers Alcohol Treatment Fund (Fund 049).
- Requires the Department of Public Safety to establish a state registry of Ohio's habitual OVI/OMWI offenders and an Internet database containing specified information regarding each person who, within the preceding 20 years, has been convicted in Ohio five or more times for a vehicle OVI or watercraft OMWI offense.
- Specifies the conditions under which a court may consider exceptions to the issuance of an order to immobilize a vehicle, establishes a $50 immobilization waiver fee, and directs the fee to the state's existing Indigent Drivers Alcohol Treatment Fund (Fund 049).

- Creates a new offense for an offender who operates a motorized vehicle that is subject to an immobilization waiver order, a violation of which is a misdemeanor of the first degree.
- Creates the state Indigent Drivers Interlock and Alcohol Monitoring Fund and specifies that moneys in the fund are to be distributed by the Department of Public Safety to local indigent drivers interlock and alcohol monitoring funds, which the bill also creates, to pay the cost of an immobilizing or disabling device for an offender determined to not have the means to pay for the offender's use of the device.
- Increases by $50, from $425 to $475, the license reinstatement that an offender is required to pay at the end of an OVI-related suspension and directs the $50 increase to the Indigent Drivers Interlock and Alcohol Monitoring Fund, which the bill creates.
- Specifies that a court may impose as a financial sanction on an OVI-related offender the cost of purchasing and using an immobilizing or disabling device.
- Provides that county, juvenile, and municipal courts must exhaust local indigent drivers interlock and alcohol monitoring funds before indigent drivers alcohol treatment funds may be used for electronic monitoring in conjunction with treatment.

OVI convictions generally

According to data provided by the Department of Public Safety's Bureau of Motor Vehicles (BMV), in calendar year 2006, there were 58,346 individuals convicted of an OVI-related offense in Ohio. Of this total number of convictions, about 13,272 involved offenders that had at least one prior OVI-related conviction within the previous six years. Although the bill affects OVI-related prohibitions and penalties for OVI-related offenders generally, arguably its more notable fiscal state and local fiscal effects may be more in terms of the manner in which certain repeat OVI-related offenders are sanctioned.

Mandatory chemical testing

Under the bill, chemical testing is mandatory for any person arrested for a suspected OVI-related violation who also has two prior convictions within the previous six years. The arresting law enforcement officer is permitted to use whatever available means are necessary to ensure compliance with the chemical testing requirement. The likely result is that more persons will be convicted of an OVI-related offense than might otherwise have been the case under the state's existing implied consent laws.

Additional OVI-related convictions

Based on information provided by BMV, LSC fiscal staff estimates that the number of persons who are arrested for an OVI-related offense annually and have two or more prior convictions at approximately 2,546. Typically, about 30% of those arrested, or around 764 in the context of this fiscal analysis, refuse to submit to any type of chemical test. Under current law, a person who refuses to submit to any type of chemical test faces an automatic administrative license suspension (ALS) regardless of whether or not that person is convicted of an OVI-related offense.

For individuals that generally submit to a chemical test (70%, or around 1,782, of the above estimated 2,546 annual repeat OVI-related offenders), the most recently available data suggests that the rate of conviction is about 74%, which translates into about 1,319 convictions annually. For individuals that generally refuse to submit to a chemical test (30%, or around 764, of the above estimated 2,546 annual repeat OVI-related offenders), the rate of conviction is 63.7%, which translates into about 487 convictions annually.

As a result of the bill's mandatory chemical testing provision applicable to certain repeat OVI-related offenders, 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% of those persons refusing to submit to a chemical test and not being convicted of an OVI-related offense under current law would, under the bill, be subject to mandatory chemical testing and likely convicted. LSC fiscal staff estimates the likely increase in OVI-related convictions at approximately 79 annually (10.3% of the pool of 764 refusals).

Existing two-tiered OVI penalty structure

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 blood alcohol content (BAC). Table 1 below summarizes that two-tiered structure and the lower BAC. A person convicted of an OVI-related offense while testing in the "high-end" tier of alcohol concentration faces a more severe penalty, primarily in terms of a longer jail or prison sentence.

Table 1
Tiers of Alcohol Concentration

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 of 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

Relative to the fiscal effects of the bill's mandatory chemical testing provision, the existence of this two-tiered penalty structure presents a difficult measurement problem in terms of determining the percentage of those who take the chemical test that registers within one of the "high-end" tiers. 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 an OVI-related offense, if not more, would register levels of alcohol concentration placing them in one of the "high-end" tiers. Based on this assumption, of the approximately 79 additional annual OVI-related convictions that LSC fiscal staff estimates will occur as a result of this bill, about 39 would be in the "low-end" BAC tier and 39 would be in the "high-end" BAC tier.

State OVI-related revenues

Fines. The 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, under current law, at a minimum, the fine revenue and distribution for "high-end" tier violations would be the same as for "low-end" tier violations. Under this bill, however, the mandatory minimum fine is increased by $50, irrespective of whether the person is a repeat OVI offender.

The most recently available information from the Department of Public Safety indicates that the mandatory fine imposed for OVI convictions averages $407.05. Including the bill's $50 increase to the minimum mandatory fine would arguably increase this average to $457.05, notwithstanding any elasticity effect in which there is some reduction in the number of offenders willing to pay the increased fine. Accordingly, the total potential amount of additional fine revenue from the estimated 79 new OVI-related convictions would be $36,107 annually. Factoring in a collection rate of about 60%, the gain in additional annual revenue would be $21,664. Under existing law, unchanged by the bill, the mandatory fine revenue collected in these cases is distributed among the state and local governments, as outlined in Table 2 below.

Table 2
Distribution of Average Mandatory OVI Fine

Governmental Unit	Percent Split	60% Collection Rate
State	20%	$4,333
Counties	42%	$9,099
Municipalities	38%	$8,232
Total	**100%**	**$21,664**

The state GRF, as noted in the above table, would gain around $4,333 annually in additional mandatory fine revenues from the new OVI-related convictions anticipated as a result of the bill's mandatory chemical testing provision.

Court costs. The vast majority of OVI-related convictions are misdemeanors. In addition to the mandatory fine, state court costs totaling $24 are also generally imposed on an offender convicted of or pleading guilty to a misdemeanor, $15 of which is directed to the GRF and $9 is directed to the Victims of Crime/Reparations Fund (Fund 402). The annual additional state court cost revenue generated from the 79 new OVI-related convictions would total $1,896, of which $1,185 will be directed to the GRF and $711 directed to Fund 402. The state court costs for felony convictions 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-related convictions, we do know that the percentage of OVI felonies is very small.

Reinstatement fees. Under current law, those refusing a chemical test face an automatic administrative license suspension (ALS). Those convicted of an OVI-related offense also face an ALS. The reinstatement fee for a suspended driver's license resulting from an OVI-related offense is currently $425. The bill increases the ALS reinstatement fee from $425 to $475 and directs the $50 increase to the Indigent Drivers Interlock and Alcohol Monitoring Fund, which the bill creates.

For the purposes of this fiscal analysis, the approximately 764 individuals refusing to submit to a chemical test, as well as the 1,319 individuals who do submit and are convicted, constitute a combined group of 2,083 that would pay the $475 license reinstatement fee. Setting aside for the moment the effect of the mandatory chemical testing on the number of licenses reinstated annually and related fee generation, the bill's $475 license reinstatement fee would theoretically generate approximately $989,425 in revenue annually.

However, if the bill is enacted, and assuming: (1) everyone submits to the now mandatory chemical test as required by the bill, (2) the previously mentioned conviction rate of 74%, and (3) a total of 2,546 OVI arrests involving offenders with two or more prior convictions, yields a group of 1,884 (2,546 x .74 = 1,884) offenders that would be required to pay to reinstate their driver's license. This would generate approximately $894,900, which, compared to the current law and practice scenario in the immediately preceding paragraph, translates into an annual revenue loss of $94,525 and is due to the fact there would be 199 fewer license reinstatements annually under the bill. This loss of revenue would be distributed among several state agencies and eight specific state funds, as outlined in Table 3 below. The net effect on Fund 402, however, is likely to be a net gain in annual revenue as there are other provisions of the bill that affect that fund's revenue collections.

Table 3
State Fiscal Effects by Fund*

STATE FUNDS	FY 2009 – FUTURE YEARS
State Bureau of Motor Vehicles Fund (Fund 4W4)	
Revenues	Likely annual loss of $5,965
Expenditures	- 0 -
Indigent Drivers Alcohol Treatment Fund (Fund 049)**	
Revenues	Likely annual loss of $7,458
Expenditures	- 0 -
Victims of Crime/Reparations Fund (Fund 402)**	
Revenues	Likely annual loss of $14,214
Expenditures	- 0 -
Statewide Treatment and Prevention Fund (Fund 475)	
Revenues	Likely annual loss of $22,384
Expenditures	- 0 -
Services for Rehabilitation Fund (Fund 4L1)	
Revenues	Likely annual loss of $14,925
Expenditures	- 0 -
Drug Abuse Resistance Education Programs Fund (Fund 4L6)	
Revenues	Likely annual loss of $14,925
Expenditures	- 0 -
Trauma & Emergency Medical Services Grants Fund (Fund 83P)	
Revenues	Likely annual loss of $3,980
Expenditures	- 0 -
Indigent Drivers Interlock and Alcohol Monitoring Fund (New Fund)	
Revenues	Likely annual loss of $9,953
Expenditures	- 0 -

* Numbers may vary slightly due to rounding.
** Other provisions of the bill will increase revenues to this fund by an uncertain magnitude.

State expenditures

***Incarceration costs*.** For felony OVI-related convictions at the "high-end" tier of alcohol concentration, current law requires a minimum 120 days of either local or state incarceration. Information obtained from the Department of Rehabilitation and Correction (DRC) indicates that the state incarceration rate for OVI-related offenders is about 0.25% of convictions. Returning to the earlier estimate of 39 new convictions annually at the "high-end" tier of alcohol concentration, and applying this incarceration rate of 0.25%, the estimated annual increase in prison-bound offenders would be statistically less than one. Such a small increase in offenders would create only a very minimal or even negligible increase in DRC's annual incarceration costs over time.

Local revenues

***Fines*.** Based on the estimated number of new convictions as well as the previously stated average fine and collection rates, LSC fiscal staff estimates that new annual mandatory fine revenues in the amount of $21,664 could reasonably be expected if the bill is enacted. These fine revenues would be split among the state and local jurisdictions, as summarized in Table 2. Counties statewide would receive 42%, or $9,099 annually, municipalities statewide would receive 38%, or $8,232 annually, 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.

The average jail time for "low-end" tier BAC violators is 9.2 days. If 39 additional persons are convicted of a "low-end" tier violation and spend this average of 9.2 days in jail, at the 2006 average cost of around $60 per day, the additional local incarceration expenditures would be $21,528 annually statewide. Since about 60% of these cases are charged under state law and 40% under municipal ordinances, and assuming the conviction rates follow a similar proportion, counties statewide would incur approximately $12,917 of this annual total and municipalities statewide would incur the remaining $8,611 per year.

This analysis has also estimated there would likely be approximately 39 additional convictions at the "high-end" BAC tier. Existing OVI Law essentially doubles the jail time for "high-end" tier OVI-related 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 "low-end" tier BAC 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 39 new "high-end" tier convictions occur under the bill 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 be $43,056. Since about 60% of these cases are charged under state law and 40% under municipal ordinances, and assuming the conviction rates follow a similar proportion, counties statewide would incur approximately $25,834 of this annual total and municipalities statewide would incur the remaining $17,222 per year.

The combined fiscal effect of jail terms for all 79 additional OVI-related convictions under the bill could result in additional annual statewide local jail costs of approximately $64,584.

Minimum mandatory fine

The bill increases the minimum mandatory fine assessed against convicted OVI-related offenders, regardless of the number of prior offenses, by $50, and directs the $50 increase to the court's special projects fund, to be used only for ignition interlock devices and alcohol monitoring devices for indigent offenders. If the court does not have a special projects fund, the $50 increase is directed for deposit in the state treasury to the credit of the Indigent Drivers Interlock and Alcohol Monitoring Fund, which the bill creates. The moneys in the fund, which is to be administered by the Department of Public Safety, are to be distributed to county and municipal indigent drivers interlock and alcohol monitoring funds, which the bill creates.

The moneys generated by the earmarked $50 increase, whether retained locally or distributed by the state, can only be used to pay the cost of an immobilizing or disabling device, including a certified ignition interlock device or an alcohol-monitoring device, to be used by indigent offenders. Absent any finding of indigence, the offender is required to pay the cost of purchasing and using an immobilizing or disabling device.

Statewide revenue generation

The increased minimum mandatory fine applies to all OVI-related convictions, including those involving an offender with no prior applicable offenses. According to BMV, in calendar year 2006, 58,346 individuals statewide were convicted of an OVI-related offense. (Of that total, about 13,272 involved a person with at least one prior conviction.) If the minimum mandatory fine for 58,346 offenders was increased by $50, and factoring in a collection rate of 60%, this provision of the bill could potentially generate approximately $1,750,380 statewide per year for the purpose of paying the cost of an immobilizing or disabling device to be used by indigent offenders.

Mandatory alcohol and drug addiction assessment and treatment

For those offenders who, within six years of the current OVI-related offense, have one or more prior OVI-related convictions, or five prior OVI-related convictions within the previous 20 years, in addition to the above-mentioned sanctions, the bill expands existing alcohol and drug addiction program sanctions to require the offender be assessed by an alcohol and drug treatment program to determine the degree, if any, of the offender's alcohol dependency and make recommendations for treatment.

Ohio currently has 46 local alcohol, drug addiction, and mental health services (ADAMHS) boards and 4 alcohol and drug addiction services (ADAS) boards that contract with service providers operating around 600 alcohol and other drug treatment programs statewide, certified by the Department of Alcohol and Drug Addiction Services. These local, essentially county-based entities, use their treatment revenue to purchase alcohol and other drug treatment services for indigent clients, which would include indigent OVI offenders.

For these indigent OVI offenders, the cost of the treatment programs is reimbursed primarily from the state's existing Indigent Drivers Alcohol Treatment Fund (Fund 049). This fund operates outside the traditional community-based funding system of state formula allocations to the above-noted county-based local boards. Fund 049 moneys are transferred via the state treasury from BMV to the Department of Alcohol and Drug Addiction Services to the local indigent drivers alcohol treatment funds administered by county, juvenile, and municipal courts. The court has control of the fund and payment is only made by court order. It appears that the statewide information on the manner in which these moneys are disbursed locally and the annual magnitude of those disbursements is not readily available.

From LSC fiscal staff's perspective, it is difficult to estimate the likely increase in the number of indigent offenders that any given court will be required to order assessed and subsequently treated. Three important variables contribute to the difficulty in producing a reasonably accurate estimate as follows:

- Alcohol and other drug treatment is a sentencing option under current law, and there is no statewide database indicating the frequency or any pattern in which the courts already sentence multiple OVI offenders into treatment.
- The bill requires that OVI offenders with at least one prior conviction in the previous six years, or five prior convictions within the previous 20 years, to be assessed by an alcohol and drug treatment program to determine the degree, if any, of the offender's alcohol dependency and treat the offender accordingly. It is not clear that every offender who is assessed will be diagnosed with a dependency problem requiring treatment. Estimating the percentage that will require treatment, according to the terms of the bill, is difficult.
- It is also not clear what percentage of OVI-related offenders would be indigent and unable to pay for any assessment and treatment services.

These uncertainties having been stated, we may be able to generalize and produce a rough estimate of the increase in caseloads involving indigent OVI offenders required, under the terms of the bill, to undergo treatment for alcohol and other drug dependency. As stated previously, in calendar year 2006, there were 13,272 individuals convicted of an OVI-related offense that also had at least one prior in the previous six years. All of these individuals would be required to undergo an assessment by a treatment program to determine whether treatment is required. Of these, 2,546 had at least two prior convictions, and 346 of those 2,546 offenders had three or more such prior convictions.

By way of generalization, one could argue that offenders with a larger number of prior convictions would be more likely to have dependency issues requiring treatment. That said, one could assert that most, but not all, of the cases in which treatment is <u>not</u> recommended following an assessment would involve the pool of offenders with only one prior conviction in the previous six years. Any additional treatment cases would, therefore, most likely come from the 2,546 cases with two or more prior convictions. Some of these offenders with multiple prior OVI-related convictions, but most likely not all, are probably undergoing assessment and treatment under current law and sanctioning practices. Unfortunately, as of this writing, this percentage is uncertain.

For the sake of argument, if one assumes that around one-half, or 50%, of these 2,546 offenders with multiple prior OVI-related convictions require treatment and are being ordered by the court into treatment under current law and sanctioning practices, then between 1,200 and 1,300 additional OVI-related offenders may be required to undergo alcohol and other drug dependency treatment annually as a result of the bill. Obviously, by changing this assumption, the estimated statewide increase in annual OVI treatment caseloads can be adjusted upwards or downwards accordingly.

If this arguably arbitrary estimate of between 1,200 and 1,300 additional OVI-related offenders requiring treatment annually were true, how many of these offenders would likely be indigent? There is a stronger likelihood that offenders with multiple prior OVI-related prior convictions have a serious history of alcohol and/or drug abuse and criminal conduct that impairs their ability to retain a job and generate a steady income. If true, this would suggest that indigency rate for this group of OVI-related offenders would be higher than that found in the general population; data suggests that the indigency rate for the latter in Ohio is about 12.3%.

One could argue that a pool of OVI-related offenders with three or more prior OVI-related convictions in the previous six years might represent a cross section of Ohioans with a much higher percentage of indigence. These offenders are far more likely to have substance abuse issues, as well as a previous criminal history, at minimum involving past OVI convictions, all of which can have a serious impact on employment opportunities and work history. As these offenders accumulate more and more OVI-related convictions, we would likely find a greater percentage claiming indigence than would be found in the general Ohio population. If we assume that half of the 1,200 to 1,300 additional OVI-related offenders requiring treatment annually were determined by the court to be indigent, then we could estimate that as many as 600 or so additional OVI-related offenders would not be able to pay for the treatment services mandated by the court.

State fiscal effects

The mandatory alcohol and drug assessment and treatment provision will produce two distinct fiscal effects as discussed below.

First, there will be costs associated with the assessment of the pool of 13,272 OVI-related offenders with at least one prior conviction in the previous six years. Some percentage of these offenders are in all likelihood already being evaluated under current law and sanctioning practices, and some of these offenders will be able to pay for the evaluations either personally or perhaps through some insurance plans. Estimating how many would likely claim indigence is problematic. For the sake of producing an estimate, it was referenced above that the level of indigence in the general population is about 12.3%. Although this pool of 13, 272 offenders may demographically differ from the general population, we may again be able to crudely estimate the number of cases in which the offender may be indigent and unable to pay for the required assessment. Using these parameters, LSC fiscal staff estimates that perhaps as many as 1,632 OVI-related offenders would be determined indigent by the court (13,272 offenders x 12.3% = 1,632).

According to staff of the Department of Alcohol and Drug Addiction Services, a treatment provider typically charges between $300 and $400 per assessment. Based on the estimate above, and assuming an average assessment cost of $350, the total statewide assessment cost for our estimated 1,632 indigent offenders will be $571,200 per year.

Second, there will be costs associated with indigent offenders being ordered into treatment by the court, which we have previously estimated at around as many as 600 or so. According to staff of the Department of Alcohol and Drug Addiction Services, a course of nonresidential outpatient treatment ranges between $1,600 and $3,000. This suggests that the bill could create additional treatment-related costs ranging between $960,000 (600 indigent offenders x $1,600) and $1,800,000 (600 indigent offenders x $3,000) annually statewide. Residential treatment, which appears to be utilized on a comparatively infrequent basis, can cost as much as $4,400 per course.

The cost of the treatment programs are covered primarily by moneys distributed from the state's existing Indigent Drivers Alcohol Treatment Fund (Fund 049), one of the seven state funds currently receiving revenue from the administrative license suspension reinstatement fee. The Department of Alcohol and Drug Addiction Services currently allocates Fund 049 moneys to the courts biannually to support alcohol and other drugs treatment services for indigent OVI offenders.

In sum, the bill, as estimated, creates additional assessment-related costs of $571,000 annually, and treatment-related costs ranging somewhere between $960,000 and $1,800,000 annually. These additional costs will presumably put additional pressure on Fund 049's annual revenue stream, as courts would look to the state to cover mandated assessment and treatment. That said, it should be noted that the bill also contains two revenue-generating provisions intended to enhance Fund 049's ability to fully reimburse courts for the costs associated with the mandatory assessment and treatment of certain repeat OVI-related offenders. Those two revenue-generating provisions – an immobilization waiver fee and a licensing option for manufacturers of certified ignition interlock devices – are discussed in more detail immediately below.

Immobilization waiver fee

The bill states that, if a court issues an immobilization waiver order involving an OVI-related offender's vehicle that was immobilized as part of the sentence, the court must collect a $50 immobilization waiver fee to be deposited in the state treasury to the credit of the state's existing Indigent Drivers Alcohol Treatment Fund (Fund 049).

Under current law, upon conviction for an OVI-related offense, the offender's vehicle may be immobilized for up to 90 days. As previously mentioned, according to BMV, in calendar year 2006, there were 58,346 OVI convictions in Ohio. The court usually orders the offender's vehicle, which typically was being stored in a municipal or private facility, to be relocated by law enforcement and immobilized with a steering wheel locking device at the offender's residence. It is not clear how many immobilization waiver orders the courts grant. They are typically granted to a family member who depends on the immobilized vehicle in their daily life.

Based on the assumptions made thus far in this analysis, the bill could increase local assessment and treatment expenditures by as much as $2,371,200 annually statewide, which combines the estimated $571,200 in additional assessment costs with the potential $1,800,000 in additional treatment costs for indigent offenders. If the $50 immobilization waiver fee alone were expected to cover these additional annual assessment and treatment costs, courts statewide would have to issue approximately 47,420 immobilization waivers and collect the associated fee. It must be stressed again, however, that all of these expenditure and revenue estimates are based on certain key assumptions concerning how the bill would affect assessments, treatment, and the issuance of immobilization waiver orders. It is difficult to state with a high degree of certainty that our estimates are accurate, or that the additional revenue will completely offset the additional costs created by the bill.

Ignition interlock device manufacturers fee

The bill requires the Department of Public Safety to publish and make available to the courts a list of licensed manufacturers of ignition interlock devices, and requires that a manufacturer wanting to be included on the list obtain an annual license from Public Safety. The application and annual renewal of the license will cost each manufacturer $100 per year. Public Safety currently publishes a listing of the seven interlock manufacturers doing business in the state of Ohio, which suggests that the annual license fee will generate $700, to be directed, pursuant to the bill, to the credit of the state's existing Indigent Drivers Alcohol Treatment Fund (Fund 049).

Additionally, the bill: (1) requires licensed manufacturers to submit a report to Public Safety containing the amount of net profit the manufacturer earned during a 12-month period that is attributable to the sales of that manufacturers certified ignition interlock devices to purchasers in Ohio, (2) requires licensed manufacturers to pay a fee equal to 5% of the amount of the net profit included in its annual report, and (3) requires the fees be directed for deposit in the state's existing Indigent Drivers Alcohol Treatment Fund (Fund 049). The amount of net profit fee revenue that this provision may generate annually is uncertain, as estimating its magnitude involves access to what is arguably confidential/proprietary information and the bill's effect on market shares.

Local indigent driver alcohol treatment funds

As mentioned above, the bill increases indigent offender assessment and treatment service costs and provides mechanisms intended to provide the necessary revenues. The bill specifically allows for these assessment and treatment expenses to be paid from local indigent driver alcohol treatment funds established at the county and municipal level under current law to pay for the treatment expenses of indigent offenders. However, judges have discretion over whether or not to use these funds to reimburse for these services.

It is not clear whether the county and municipal jurisdictions with authority to adjudicate OVI-related cases involving indigent offenders will have sufficient revenue to completely cover the additional assessment and treatment expenditures a court would be required to order. When the state and local indigent drivers alcohol treatment funds are exhausted, the local treatment system will have the responsibility for both ensuring access and payment of services. There is also the possibility that if indigent OVI offenders are Medicaid eligible; the local treatment provider may be reimbursed for 60% of the cost of assessment and treatment. LSC fiscal staff cannot at this time reliably estimate Medicaid eligibility in these circumstances.

Ignition interlock devices

The bill requires that courts not grant limited driving privileges to offenders convicted of an OVI-related offense, after certain specified time periods, unless the vehicle is equipped with a certified ignition interlock device, which will prevent the ignition of the vehicle's engine if the operator has been drinking. Unless determined to be indigent by the court, the offender is expected to pay for all of the associated costs.

According to representatives of two of the nationally based ignition interlock manufacturers, there is typically a one-time installation cost, paid directly to a locally contracted vendor that installs and calibrates the device, which may run between $40 and $65 depending on the device and vendor. Once installed, an ignition interlock device is typically leased on a monthly basis at a cost of $60 to $70 for the duration of the sentence. By requiring these certified ignition interlock devices as a condition of being granted limited driving privileges, there will certainly be an increase in the number of such units installed. As of this writing, LSC fiscal staff has yet to determine the frequency with which courts statewide grant limited driving privileges under current law or how this new requirement may constrain some offenders from requesting such privileges.

Indigent Drivers Interlock and Alcohol Monitoring Fund

As previously mentioned, the bill increases the minimum mandatory fine assessed against convicted OVI-related offenders, regardless of the number of prior offenses, by $50 and directs the increase to the court's special projects fund to be used only to pay the cost of an immobilizing or disabling device for indigent offenders. If the court does not have a special projects fund, the $50 increase is directed for deposit in the state treasury to the credit of the Indigent Drivers Interlock and Alcohol Monitoring Fund, which the bill creates. The moneys in the fund, which is to be administered by the Department of Public Safety, are to be distributed to county and municipal indigent drivers interlock and alcohol monitoring funds, which the bill creates.

According to BMV, in calendar year 2006, 58,346 individuals statewide were convicted of an OVI-related offense. If the minimum mandatory fine for 58,346 offenders were increased by $50, and factoring in a collection rate of 60%, this provision of the bill could potentially generate approximately $1,750,380 statewide per year for the purpose of paying the cost of an immobilizing or disabling device to be used by indigent offenders. This revenue would be retained by the courts, or distributed to the courts around the state by Public Safety, and used to pay for ignition interlock devices and alcohol monitoring devices for indigent offenders. It is not clear whether this additional revenue will be sufficient, or not, to cover any expenditure increases by the courts to help install ignition interlock devices on the vehicles of indigent offenders seeking limited driving privileges.

Continuous alcohol monitoring

The bill provides that an offender convicted of an OVI-related offense, and who has been granted limited driving privileges, becomes subject to continuous alcohol monitoring should any of the following occur:

- If the offender operates a vehicle not equipped with the certified ignition interlock device.
- If the offender attempts to circumvent or otherwise tamper with the interlock device.
- If a court receives notice that a certified ignition interlock device has prevented an offender from starting a motor vehicle.

In certain circumstances, the court may require continuous alcohol monitoring; however, in most situations described in the dot points above, the court must require the use of continuous alcohol monitoring. As of this writing, LSC fiscal staff cannot reliably predict the number of offenders that would become subject to continuous alcohol monitoring in the manner as described above.

The bill also specifies that, if a court grants limited driving privileges to a person who is alleged to have committed an OVI-related offense, and has yet to be tried, and who would be sentenced as a repeat offender if convicted of that offense, the court may: (1) prohibit the person from consuming any beer or intoxicating liquor, and (2) require the person to wear a monitor that provides continuous alcohol monitoring that is remote until the case is properly adjudicated. As of this writing, LSC fiscal staff cannot reliably predict the number of offenders that would be sanctioned in this manner.

State revenues

Indigent Drivers Alcohol Treatment Fund (Fund 049). Existing section 4511.191 of the Revised Code provides that moneys deposited in the state treasury to the credit of the Indigent Drivers Alcohol Treatment Fund (Fund 049) be distributed by the Department of Alcohol and Drug Addiction Services to pay for indigent alcohol and drug addiction treatment as well as continuous alcohol monitoring. To the extent that revenues are available in Fund 049, they will help defray the local expenses associated with providing for continuous alcohol monitoring of indigent OVI offenders. It is also important to keep in mind that the bill creates two competing pressures on the revenues available in Fund 049. In addition to local expenses

for alcohol monitoring, the fund will also be utilized to help pay for mandated alcohol assessment and treatment caseloads, as discussed earlier.

Indigent Drivers Interlock and Alcohol Monitoring Fund. As already mentioned, the bill creates, in the state treasury, the Indigent Drivers Interlock and Alcohol Monitoring Fund. The fund's moneys are to be distributed by the Department of Public Safety to county and municipal indigent drivers interlock and alcohol monitoring funds that local jurisdictions are required to establish to pay the cost of an immobilizing or disabling device, including a certified ignition interlock device or an alcohol monitoring device, to be used by an indigent offender.

Whether the revenues generated and distributed from these two state funds are sufficient to offset the additional continuous alcohol monitoring expenses created by the bill is uncertain as of this writing.

Local fiscal effects

According to a representative of the leading vendor for this product, Alcohol Monitoring, Inc. of Highlands Ranch, Colorado, the cost of each continuous alcohol monitoring installation, which includes the modem and bracelet worn by the offender, involves a one-time equipment expense of somewhere between $50 and $100, plus $10 to $12 per day for the cost of the remote monitoring. The vendor conducts all monitoring functions for its Colorado location. Thus, in order for the court to implement a continuous alcohol monitoring program, it will not need to purchase and maintain monitoring equipment, nor perform any monitoring. Local law enforcement or the court's probation department would be notified of violations as they occur. Depending on how the probation department chooses to handle these notifications, there may be some increase in local expenses associated with the manner in which violations are addressed. As of this writing, LSC fiscal staff is not certain how courts would handle violations or the magnitude of any associated costs.

Unless determined by the court to be indigent, an offender subject to continuous alcohol monitoring would pay all associated costs. If the offender is determined to be indigent, then the county or municipality would utilize available revenues from either their local indigent drivers alcohol treatment or indigent drivers interlock and alcohol monitoring funds to pay for the monitoring costs. The bill specifies that counties and municipalities must first exhaust their indigent drivers interlock and alcohol monitoring funds before indigent drivers alcohol treatment funds are used for continuous alcohol monitoring.

It is difficult to reliably estimate the number of additional offenders that would, as a result of the bill, be subject to continuous alcohol monitoring and determined by the court to be indigent. One complication arises from the fact that offenders facing continuous alcohol monitoring are more likely to be serious repeat offenders that suffer from alcohol abuse problems. To the extent that these offenders have more serious criminal histories, in addition to the addiction issues, and these factors affect their work histories and overall socioeconomic status, many of the offenders directly affected by the bill will likely not be able to afford the $300 to $360 in monthly remote monitoring charges, let alone the initial one-time installation charge of $50 to $100. Whether the magnitude of the local indigent drivers alcohol treatment and indigent drivers interlock and alcohol monitoring funds will be sufficient to offset the additional continuous alcohol monitoring expenses created by the bill is uncertain as of this writing.

Habitual offender database

The bill requires the Department of Public Safety to establish a state registry of Ohio's habitual OVI/OMWI offenders and an Internet database containing specified information about persons who, within the preceding 20 years, has been convicted in Ohio five or more times for a vehicle OVI or watercraft OMWI offense. The bill requires any court that convicts a person of any OVI-related offense for a fifth or subsequent time to send Public Safety a sworn report containing specified information regarding the convicted person and prior convictions for similar offenses occurring within the preceding 20 years.

Staff of the Department of Public Safety informed LSC fiscal staff that the Department would likely incur additional expenses associated with establishing and maintaining the required registry and database. The ongoing operation of the database, as well as all of the data management functions, may actually necessitate the hiring of three new employees, at a total annual cost of around $100,000. In addition, one-time expenses totaling approximately $82,500 will be incurred to make necessary information technology (IT) infrastructure and programming changes.

The bill creates an additional $2.50 court cost, directs the fee for deposit in the state's existing State Highway Safety Fund (Fund 036), and states that the Department of Public Safety is to use the fee for its costs associated with maintaining the offender registry. Specifically, in any case in which a court grants limited driving privileges to an OVI-related offender (subject to the installation of an ignition interlock device), or requires a offender to wear a continuous alcohol monitoring bracelet, typically for violating the terms of the limited driving privileges, the court must impose and collect a new court cost in the amount of $2.50 which cannot be waived by the court unless the offender is indigent. Whether this new revenue stream will be sufficient to completely offset the cost of operating and maintaining the offender registry is uncertain at this time.

The bill also gives discretion to the court, in the conditions described immediately above, to impose an additional $2.50 in court costs, which, if imposed, must be deposited in the court's special projects fund. Under current law, which is unchanged by the bill, the moneys in this fund can be used to acquire and pay for special projects of the court, including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Presumably, any revenues collected in this special projects fund could be used to help defray any additional expenses that might be incurred by the clerk of courts to reprogram their computerized accounting systems in order to keep track of the bill's various revenue-generating changes.

Penalty for offender operating a vehicle in violation of an immobilization order

The bill provides that an offender who operates a vehicle that is subject to an immobilization waiver order is guilty of the offense of operating a motor vehicle in violation of an immobilization waiver, a violation of which is a misdemeanor of the first degree.

Local fiscal effects

Criminal justice system expenditures. Presumably, offenders will violate this prohibition, the practical effect of which will be to create additional misdemeanor cases for county and municipal criminal justice systems to resolve. If this were to happen, then, theoretically at least, local criminal justice system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders would increase in any affected county or municipality. As the likely number of violations that may occur annually in any affected local jurisdiction is uncertain, any resulting increase in county and municipal criminal justice system expenditures is uncertain as well.

County and municipal revenues. Violations of this prohibition also create the potential for affected counties and municipalities to collect related court cost and fine revenues, the annual magnitude of which is uncertain.

State fiscal effects

The court is generally required to impose state court costs totaling $24 on any offender convicted of, or pleading guilty to, a misdemeanor. Of that amount, $15 is directed to the GRF and $9 is directed to the Victims of Crime/Reparations Fund (Fund 402). As of this writing, the magnitude of the additional revenue that might be generated for either state fund annually is uncertain.

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