

BILL # HB 2485

TITLE: DUI; 0.08

SPONSOR: Cooley

STATUS: As Introduced

REQUESTED BY: House

PREPARED BY: Brad Regens

FISCAL YEAR

2001

2002

2003

EXPENDITURES

General Fund - Department of Corrections	\$-0-	\$-0- to \$222,500	\$-0- to \$222,500
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REVENUES

Penalty Surcharge ^{1/}	\$-0-	\$-0- to 727,700	\$-0- to \$727,700
Federal Funds - New Incentive Payments ^{2/}	2,319,700	2,319,700	2,319,700
Federal Funds - Prevent Revenue Loss ^{3/}	-0-	-0-	-0-

^{1/} The total penalty assessment equals 77% of the fine. Monies are distributed 47% to the Criminal Justice Enhancement Fund (CJEF), 13% to the Medical Services Enhancement Fund, 10% to the Citizens Clean Elections Fund and 7% to various State Aid to the Criminal Justice System funds.

^{2/} Represents the amount Arizona would have received in FY 2000 if the state's Blood Alcohol Concentration limit were 0.08. Actual future revenues will depend on the number of states enacting a 0.08 standard.

^{3/} Prevents loss in annual federal funding, starting at \$6.9 million in FY 2004 and growing to \$27.7 million in FY 2007.

FISCAL ANALYSIS

Description

As introduced, the bill would lower the legal Blood Alcohol Concentration (BAC) limit for lawful operation of a motorized vehicle from 0.10 to 0.08. The bill contains an emergency clause and would become effective upon signature of the Governor.

Estimated Impact

Expenditures

The JLBC Staff estimates that the bill would increase the number of Driving Under the Influence (DUI) arrests by 2,100. We have assumed that up to 189 of these new offenders would be sentenced to the Arizona Department of Corrections (ADC). These estimates are speculative and will change depending on how the law is actually implemented in Arizona. These costs assume an 8% increase in DUI arrests, based on the experience in other states. That growth in DUI arrests in other states, however, has varied considerably.

The General Fund cost would range from \$0 to \$222,500 depending on the actual number sentenced to ADC. The remaining persons convicted of DUI would be sentenced to jail. The local cost for additional jail days would range from \$160,700 to \$2.6 million depending on the distribution of convictions between first-time and second-time offenders.

These estimates do not account for the fact that A.R.S. § 28-1444 requires the court to order a DUI offender to reimburse local governments for their incarceration costs. We are working with local jurisdictions to determine the extent to which DUI offenders are currently paying for their incarceration costs.

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Estimated Impact (Continued)

We have insufficient data to determine the fiscal impact to the rest of the criminal justice system, including courts, prosecutors and public defenders. The fiscal impact to courts, prosecutors and public defenders will depend on the ability of law enforcement to arrest any additional DUI offenders without more officers, the conviction rate and trial rate.

While the bill contains an emergency clause, we have assumed that the fiscal impact will not begin until FY 2002, as we do not know when the measure may be passed by the Legislature and signed by the Governor.

Revenues

Each additional DUI conviction also results in additional court revenue as a first-time offender is sentenced to pay a minimum fine of \$250 and a second-time offender \$500. All monies collected from the base fine are deposited in either the county or city General Fund. Depending on actual collection rates, local governments would receive between \$0 and \$945,000. Each fine is also subject to a 77% penalty surcharge that would be distributed to the Criminal Justice Enhancement Fund (43%), the Medical Services Enhancement Fund (13%), the Citizens Clean Elections Fund (10%), and various state aid to the criminal justice funds (7%). The total amount distributed would range between \$0 and \$727,700. The recipients of the penalty surcharge monies are set in statute and include both state and local agencies.

In addition, the JLBC Staff estimates that the bill would increase federal monies for highways. The exact amount that Arizona would receive cannot be estimated because it is based on the number of states that have adopted the 0.08 standard by the end of Federal Fiscal Year (FFY) 2003. However, we estimate it would be approximately \$2.3 million in FFY 2001, FFY 2002 and FFY 2003 based on the amount Arizona would have received in FY 2000. The total funding available for distribution to participating states is \$90 million in FFY 2001, \$100 million in FFY 2002 and \$110 million in FFY 2003.

The bill would also enable Arizona to avoid sanctions on federal highway monies that could reduce Arizona's future federal highway monies. If federal sanctions are reauthorized and Arizona did not enact a BAC limit of 0.08 by October 2003, Arizona would lose \$6.9 million in FFY 2004. The loss would grow to \$27.7 million in FFY 2007. The sanctions would continue at this level per year after FFY 2007 until Arizona adopted the 0.08 standard.

Assumptions

Expenditures

Except for a projected increase in jail days served and a potential increase in prison days served by additional DUI offenders, we cannot estimate the fiscal impact to the criminal justice system from lowering the 0.08 BAC limit. The fiscal impact to courts, prosecutors and public defenders will depend on whether law enforcement would be able to arrest any additional DUI offenders without more officers, the conviction rate and trial rate. For example, increased trials would either result in longer case processing times or the need to add additional court personnel and courtrooms. Unfortunately, we do not have information or "rules of thumb" that would allow the JLBC Staff to estimate the need for additional courtrooms or personnel from an increase in trials.

From Calendar Year (CY) 1996 through CY 2000, Arizona averaged 26,100 DUI arrests per year. The JLBC Staff projects that the bill would result in an 8% increase or 2,100 additional arrests per year beginning in FY 2002. While statistics are maintained on the number of DUI offenders in Arizona at each BAC reading of 0.10 and above, statistics for persons registering below 0.10 are not kept. As a result, the JLBC Staff projection is based on the experience of other states that have lowered their BAC limit to 0.08. For example, after enacting a BAC limit of 0.08, California's DUI arrests increased by 11.1% and Illinois' increased by 5.2%. Based on past information received from the city of Phoenix Prosecutor's Office and the Yuma County Attorney's Office, we have assumed that 90% of the arrests will result in a conviction. We estimate a total increase of 1,890 convictions (90% of 2,100).

Persons convicted for a standard DUI are subject to increasing sentences based on the number of prior DUI convictions. A first-time standard DUI offender shall be sentenced to 10 days in jail with the judge able to suspend all but 24 hours. A second-time offender shall be sentenced to 90 days in jail with a mandatory sentence of 30 days. A third conviction within 5 years results in a mandatory 4 months in prison. For FY 1999, persons sentenced to ADC represented approximately 9% of all DUI arrests. Assuming an even distribution of third-time offenders throughout the BAC scale (0.10 and above), we would project lowering the BAC limit to 0.08 would result in approximately 189 additional DUI offenders sentenced to ADC (9%

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Assumptions (Continued)

of 2,100). Using the budgeted marginal cost rate of \$3,531 to add 1 additional inmate per year to ADC, we estimate the General Fund impact if 189 persons were sentenced to ADC for 4 months to be approximately \$222,500. However, given that the average BAC for all offenders from CY 1996 to CY 2000 was 0.167, it could be argued that the new 0.08 standard might not result in additional DUI offenders sentenced to ADC. Fewer persons would be projected to be sentenced to ADC if data showed that repeat offenders have a higher average BAC level than first-time offenders. Such data, however, is not available at this time. As a result, we believe our estimate represents the upper range of the additional cost to ADC and that the actual impact will be between \$0 and \$222,500.

Persons convicted of a first or second DUI offense would not be incarcerated in prison but would receive mandatory jail sentences. The JLBC Staff estimates the local impact from increased jail days served would range from \$160,700 to \$2.6 million. The bottom of the range represents the cost if all additional DUI convictions were first-time offenders and the top denotes the estimated cost if all additional convictions were second-time offenders. (First-time offenders typically serve 24 hours, while second-time offenders serve 30 days.) Due to inmate processing associated with an offender’s first day in jail the cost per inmate per day is higher on the first day then subsequent days. The JLBC Staff has used a first day cost of \$85 per offender and a daily rate of \$45 thereafter. Per offender per day costs in county jails range from \$36.75 to \$56.05 and the city of Phoenix reports a first day cost of \$85. The actual increase in jail costs will depend in part on the distribution of first-time versus second-time offenders and to the extent to which DUI offenders pay for their incarceration costs.

As mentioned above, we cannot estimate the added cost to other portions of the criminal justice system such as the need for additional court personnel, judges and attorneys.

Revenues

Each additional DUI conviction also results in additional court revenue as a first-time offender is sentenced to pay a minimum fine of \$250 and a second-time offender \$500. Using the JLBC assumption of 1,890 additional DUI convictions (90% of 2,100), we project additional court revenues of \$0 to \$945,000, which would be deposited in the local government’s General Fund. Actual collections will depend on the actual number of convictions, whether any persons are fined more than the mandatory minimum, the distribution of first-time versus second-time offenders, and collection rates. The bottom of the range represents the additional revenues if no fines are collected from the new offenders and the top denotes the monies collected if each additional offender were assessed \$500. In addition to the base fine, an offender is charged a penalty surcharge totaling 77% of the original fine. The additional surcharge revenue would range from \$0 to \$727,700. The following table shows the distribution of the base fine and penalty assessment.

Statutory Distribution of DUI Fines and Penalty Surcharges	
<u>Penalty</u>	<u>Revenue</u>
Fine	
Local Governments - General Fund	\$ 945,000
Surcharge	
Criminal Justice Enhancement Fund	444,200
Medical Services Enhancement Fund	122,900
Citizens Clean Elections Fund	94,500
State Aid to the Criminal Justice Funds	<u>66,100</u>
Surcharge - subtotal	\$ 727,700
TOTAL	\$1,672,700

In October 2000, President Clinton signed into law 0.08 BAC as the national standard for impaired driving. The law requires states to lower their BAC limit to 0.08 by FFY 2004 or have 2% to 8% of their highway construction funds withheld. To avoid sanctions, a state must have a 0.08 law in effect by October 2003. States adopting 0.08 by October 2007 would be reimbursed for any lost federal funds. In addition to sanctions, the federal government has attempted to encourage states to adopt the 0.08 standard by creating an incentive grant totaling \$90 million in FFY 2001, \$100 million in FFY 2002 and \$110 million in FFY 2003. As introduced, the bill would make Arizona eligible for a portion of these monies beginning in FFY 2001. Arizona’s share of the grant would be based 75% on the ratio of Arizona’s population to the total population of states

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Assumptions (Continued)

with a BAC limit of 0.08 and 25% on the ratio of public road miles in Arizona to the total public road miles in participating states. If Arizona had adopted the 0.08 standard during FFY 2000, the state would have received approximately \$2.3 million in additional federal grant monies for highway related expenditures. As mentioned above, the exact amount that Arizona would receive in the future depends on the number of states enacting the 0.08 standard by the end of FFY 2001, FFY 2002 and FFY 2003. In addition, the federal government has not passed legislation providing incentive monies past FFY 2003.

Whether states ultimately lose any federal highway construction monies will not be finally determined until 2003 as the federal highway legislation containing the 0.08 standard must be reauthorized prior to FFY 2004. If the 0.08 standard were removed as part of the reauthorization of federal highway construction monies, states without a 0.08 law would not lose federal monies. If the national BAC standard were not revisited, the sanctions would take effect beginning FFY 2004. The following table displays the anticipated future federal monies for highway construction with and without passage of a 0.08 BAC level in Arizona and continuation of 0.08 as the national BAC standard.

Federal Monies for Highway Construction (FY 2004 - FY 2007)				
<u>Federal Fiscal Year</u>	<u>Penalty</u>	<u>With 0.08 BAC Level</u>	<u>Without 0.08 BAC</u>	<u>Difference</u>
2004	2%	\$ 346,186,700	\$ 339,263,000	\$ 6,923,700
2005	4%	346,186,700	332,339,200	13,847,500
2006	6%	346,186,700	325,415,500	20,771,200
2007 ^{1/}	8%	346,186,700	318,491,800	27,694,900
TOTAL		\$1,384,746,800	\$1,315,509,500	\$69,237,300

^{1/} The sanction would be 8% beginning in FFY 2007 and continue at 8% each year thereafter.

Local Government Impact

The JLBC Staff estimates the local impact from increased jail days served would range from \$160,700 to \$2.6 million. As mentioned earlier, statute requires DUI offenders to pay for their jail costs and we are further researching the extent to which this cost is currently being collected. With additional DUI convictions, local governments would also receive additional revenues ranging from \$0 to \$945,000. The local government would also receive a portion of the additional surcharge monies. For example, sheriff offices statutorily receive 11.7% of all CJEF revenues. Also, the state aid to criminal justice funds are allocated to the courts, county attorneys and public defenders to aid case processing.

The basis for our expenditure and revenue projections is detailed in the Assumptions section above.