



## The Fiscal Impact of Felony DWI Legislation

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This issue brief will discuss the possible fiscal impact of proposed legislation to create a felony for repeat driving while intoxicated (DWI) offenders.<sup>1</sup> It will address the possible cost categories and revenue sources associated with a felony DWI offense. This issue brief will also briefly discuss issues related to paying for any additional costs.

In Minnesota a repeat offense can only be charged as a gross misdemeanor. By comparison, 38 states have a felony DWI offense for repeat offenders. Felony DWI legislation was introduced during the 2000 legislative session but did not pass, due in part to concerns about the potential costs associated with implementing the change. Putting a price tag on making a repeat DWI offense a felony is difficult because of the many unknowns and many variables involved.

### Factors That Influence The Costs

If felony DWI legislation is passed, it has the potential to increase costs for both the state and local units of government.<sup>2</sup> Increasing the penalties for DWI to the felony level would likely mean that offenders may spend more time in prison, jail or on probation. It could also involve an increase in implied consent hearings, trials and appeals. The costs are estimated to continue to increase for several years after legislation is passed. The fiscal note on any proposed felony DWI legislation depends on how the bill is structured, what its provisions are, and the assumptions that agencies use in estimating costs. The cost will depend on a number of factors, including the following:

#### ***Thresholds for a felony***

The felony threshold determines when a DWI offense becomes a felony, and it consists of two parts.

- First, at what offense level should the felony penalties apply (such as how many prior DWI offenses are needed to be considered a felony)? This criterion varies among those states with felony DWI laws, ranging from the second offense to the fifth offense. The higher the criterion number, the less costly it will be because fewer individuals will reach the felony offense level. Table 1 on the next page displays the differences in the projected number of

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<sup>1</sup>Felony means a crime for which a sentence of imprisonment for more than one year may be imposed.

<sup>2</sup>For example, the fiscal notes for the felony DWI bill during the 2000 session showed state expenditures that ranged from \$11 million to \$29 million for the biennium. The local fiscal impact note showed local government costs of over \$17 million for the biennium with costs increasing to over \$33 million for the next biennium.

new DWI felonies per year using a 10 year look-back but using different criterion levels for when the DWI offense becomes a felony.

<b>Table 1: DWI Offense Level - Impact on New Felonies</b>			
	<b>3rd in 10 years</b>	<b>4th in 10 years</b>	<b>5th in 10 years</b>
Number of New Felonies	3,866	1,388	548

As Table 1 shows, changing the offense level from the 3<sup>rd</sup> offense in 10 years to the 5<sup>th</sup> offense in 10 years, would reduce the number of new DWI felonies from an estimated 3,866 to 548 per year.

- Second, what should the look-back period be? The look-back period is the time period in which the prior convictions will be considered in determining whether an offender may be charged with a felony DWI. The longer the time period, the more expensive the legislation will be because there will be more cases in the felony pool. The look-back period in other states varies from three years to the offender's lifetime. Most of the proposals discussed during Minnesota's 2000 legislative session used a 10-year look-back period, which is consistent with the look-back period used throughout Minnesota's existing DWI laws. The following table shows the number of new felony DWI cases per year using the fourth or more DWI offenses as the criterion but with different look-back periods.<sup>3</sup>

<b>Table 2: Look-Back Period</b>				
	<b>4th in 12 years</b>	<b>4th in 10 years</b>	<b>4th in 8 years</b>	<b>4th in 6 years</b>
Number of New Felonies	1,824	1,388	968	555

As Table 2 shows, changing the look-back period from 12 years to 6 years would result in an estimated 1,269 fewer DWI felonies per year.

### **Prison/Jail Time**

The length of the sentence and where the sentence will be served would also play a large part in determining the costs. In other states, the longest maximum sentence that could be imposed for a felony DWI is 30 years and the shortest maximum sentence is one year. Another issue to consider is where the felony offenders will serve their additional time. If it is the intent of the legislation for offenders to serve their sentences in a state correctional facility, then the cost will be paid by the state. However, if the intent is to have offenders serve their time in a local jail or workhouse then the costs will fall on the local units of government.

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<sup>3</sup>Based on information from the Department of Public Safety, Office of Traffic Safety.

### ***Probation Time***

The length of time the individual will be on probation would also affect costs. The longer the time period an individual will be on probation the more expensive it will be. Also, the more intensive the supervision of the person on probation, the greater costs will be.

### ***Treatment***

If treatment is to be a part of the sentence, then cost estimates would have to include expenses for treatment services. For example, according to the Department of Human Services the average cost per case for publicly paid admissions for outpatient treatment is \$1,400; for short-term inpatient treatment it is \$4,200; for extended care it is \$6,000; and for a half-way house it is \$3,500.

### ***Sentencing Practices***

Sentencing practices of judges are an important consideration. For example, even under current sentencing practices, there are some types of cases such as Assault in the 2<sup>nd</sup> Degree that have a statutory mandatory prison sentence, yet about one-half of those convicted receive a downward dispositional departure and are placed on probation. Another example relates to drug offenders. In 1999, for those drug offenders where the guidelines recommend prison, 38 percent were downward dispositional departures and these offenders were instead sentenced to probation.

### **Summary of Costs And Revenues Sources**

Table 3 on the next page addresses possible costs and revenue sources for any felony DWI proposal. The summary does not reflect official cost estimates since the estimated costs and revenues will be determined once the details of the bill are known. As mentioned above, the costs will vary depending on the number of felons and the estimated time they will spend in prison or jail and the estimated time they will spend on probation. The first table addresses state costs and revenue sources and the second table looks at local cost factors. The key assumption will be the estimated number of offenders that would fall into the felony DWI category.

It should be pointed out that the fiscal note for any felony DWI bill will be very difficult to complete and will require many assumptions and guesses on what may happen if such a bill is passed. Completion of the fiscal note will also be complicated by the fact that at least seven state agencies and local units of government will be involved.

<b>Table 3: Possible State Costs and Revenues</b>		
<b>State Agency/Program</b>	<b>Possible Expenses</b>	<b>Possible Revenues</b>
Corrections	<ol style="list-style-type: none"> <li>1. Increase in prison days.<sup>4</sup></li> <li>2. Treatment costs.</li> <li>3. Increase in probation days, requiring more probation officers (it is estimated that 30 percent of the offenders will be supervised by state agents).</li> </ol>	Probation fees
Attorney General	<ol style="list-style-type: none"> <li>1. Increase in implied consent hearings (i.e., license revocation appeals).</li> <li>2. Increase in felony DWI conviction appeals.</li> </ol> <p>These increases may result in the need for more attorney general staff.</p>	
Bureau of Criminal Apprehension (BCA)	Increase in implied consent hearings and trials involving BCA staff as witnesses, which could result in a need for additional staff.	
State Patrol	Increase in implied consent hearings and trials involving troopers as witnesses. This would mean possible overtime costs.	Fine revenue
Supreme Court	Increased staffing costs due to an increase in implied consent hearings, trials and technical violation hearings. According to court statistics, a felony takes 64 minutes more to adjudicate than a gross misdemeanor.	Fine revenue
Public Defense Board	Increase staffing costs due to an increase in trials and technical violation hearings, and more difficult plea negotiations	Public Defender fees

There are possible local costs and revenues that are associated with a felony DWI. Table 4 on the next page is an attempt to identify some of the cost and revenue categories that the local units of government may experience. A local impact note was prepared during the 2000 session on this issue.

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<sup>4</sup>This will probably be the most expensive part of the bill. The Department of Corrections (DOC) estimates their daily per diem at \$69.70 for adding new inmates to existing state facilities.

<b>Table 4: Possible Local Costs And Revenues</b>		
<b>Government Unit</b>	<b>Possible Expenses</b>	<b>Possible Revenues</b>
Jails	Increase in jail days. This expenditure depends on whether the legislation places the offender in prison or in jail.	
Probation/ Community Corrections	Increase in probation days requiring more probation officers since 70 percent of the offenders will be supervised by county community correction agents.	Probation fees and other fees, such as having offenders pay for their treatment costs or their electronic alcohol monitoring costs.
Law Enforcement	Increase in implied consent hearings and trials that officers would be involved in. This would mean possible overtime costs.	Fine revenue.
County Attorney	County attorneys would now be responsible for the felony level cases. For the seven county metro area an increase in appeals. This could mean more staff or overtime expenses.	Possible savings for cities in which the city attorney would have handled the case if it was still a gross misdemeanor.

### Who Should Pay For a Felony DWI?

The question arises regarding who should pay for the expenses related to a felony DWI law if one is enacted. The following revenue sources have been mentioned in discussions to date:

<b>Table 5: Potential Revenue Sources</b>	
<b>Who Benefits? Who Should Pay?</b>	<b>Possible Funding Source</b>
All taxpayers	General fund appropriation.
All insured drivers	Surcharge on insurance premium (similar to the 50 cent surcharge used in the auto-theft prevention program).
All who consume alcohol	Increase in alcohol tax.
DWI offenders	Increase in fine, surcharge or license reinstatement fee.

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