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**FISCAL IMPACT STATEMENT**

**LS 7541**

**BILL NUMBER: HB 1800**

**NOTE PREPARED: Jan 21, 2005**

**BILL AMENDED:**

**SUBJECT:** Operating While Intoxicated (OWI) Enhancements.

**FIRST AUTHOR:** Rep. Thomas

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
DEDICATED  
FEDERAL

**IMPACT:** State

**Summary of Legislation:** This bill permits an OWI offense to be enhanced due to a prior OWI conviction within the previous ten years. (Current law permits enhancement for an OWI conviction within the previous five years.) It also makes a technical correction.

**Effective Date:** July 1, 2005.

**Explanation of State Expenditures:** *Summary:* The bill may result in the need for 325 new beds by 2012 for the Department of Correction (DOC). Assuming that no new facilities are constructed before FY 2012, DOC would either place these additional offenders in existing facilities or in either county jails or contract facilities in other states.

As of November 30, 2004, DOC facilities housed 22,501 offenders and had a rated bed capacity of 17,465. Consequently, if these additional offenders are placed in DOC facilities, the added population will increase the overcrowded conditions. If these offenders are placed in either county jails or in contract facilities, the added costs would be between \$4.1 M, if DOC contracts with county jails at \$35 per day, and \$5.7 M, if DOC contracts with a private vendor at \$48 per day.

*Statutory Background* – Under current law, offenders who are convicted of operating a vehicle while intoxicated can be sentenced to local supervision or imprisonment or to DOC for terms ranging from six months to 20 years, depending on the severity of the offense. Local supervision or imprisonment includes placement in a probation or community corrections program or incarceration in a county jail.

The following chart shows the current penalties for OWI offenses.

<b>Table 1: Current Penalties for OWI</b>						
<b>Code Cite</b>	<b>OWI Offense</b>	<b>Time Period</b>	<b>Offense</b>	<b>Period of Incarceration</b>		
				<b>Min.</b>	<b>Presump- tive</b>	<b>Max.</b>
IC 9-30-5-2	OWI	first offense	Misdemeanor		Local Supervision	
IC 9-30-5-3	w/ prior OWI	prior OWI w/in 5 years	Felony D	6 ms.	1.5 yrs.	3 yrs.
IC 9-30-5-4	causing serious bodily inj.	first offense	Felony D	6 ms.	1.5 yrs.	3 yrs.
IC 9-30-5-4	causing serious bodily inj.	prior OWI w/in 5 years	Felony C	2 yrs	4 yrs.	8 yrs.
IC 9-30-5-5	causing death	first offense	Felony C	2 yrs.	4 yrs.	8 yrs.
IC 9-30-5-5	causing death	prior OWI w/in 5 years	Felony B	6 yrs.	10 yrs.	20 yrs.

As proposed, the time period for enhancing an OWI offense would increase if the prior offense was committed within ten years instead of within the current five years.

Besides the statutory terms of incarceration, IC 35-50-2-2 allows sentencing courts to suspend the sentences of certain nonviolent offenses and requires the convicted offenders to serve the suspended time on probation. This section of the statute has the following relevant effects on OWI offenses.

<b>Table 2: Mandatory Minimum Terms of Incarceration Under IC 35-50-2-2</b>					
<u>Code Cite</u>	<u>OWI Offense</u>	<u>Time Period</u>	<u>Minimum Sentence?</u>	<u>Circumstance</u>	<u>Minimum Sentence</u>
IC 9-30-5-3	w/ prior OWI offense	prior OWI w/in 5 yrs.	yes	2 or more OWI convictions	6 mos.
IC 9-30-5-4	causing ser. bodily inj.	first offense	no		
IC 9-30-5-4	causing ser. bodily inj.	prior OWI w/in 5 yrs.	no		
IC 9-30-5-5	causing death	first offense	yes	.15 BAC or cntrld substance	6 yrs.
IC 9-30-5-5	causing death	prior OWI w/in 5 yrs.	yes	.15 BAC or cntrld substance	6 yrs.

Consequently, some Class C and D felonies can be suspended, and the offenders can be sentenced to either probation or community corrections.

*OWI Statistics* – The following table shows a five-year history of OWI offenses. The Bureau of Motor Vehicles reports the number of guilty citations for each of the three major offenses, and DOC reports the number of offenders who are committed each year to DOC facilities for each major category.

<b>Table 3: OWI Statistics Reported by the Bureau of Motor Vehicles and the Department of Correction</b>							
		<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>5-Yr. Avg.</u>
IC 9-30-5-2 OWI Class A Misdemeanor	Guilty Citations	20,197	18,520	20,677	19,305	18,581	19,456
	No Commitments to DOC for Misdemeanors						
IC 9-30-5-3 OWI With Prior OWI	Guilty Citations	4,282	3,841	4,171	4,557	4,501	4,270
	DOC Commitments	941	1,037	1,094	1,269	1,204	1,109
	Percent Committed	22%	27%	26%	28%	27%	26%
IC 9-30-5-4 Causing Serious Bodily Injury	Guilty Citations	75	78	85	85	90	83
	DOC Commitments	23	29	43	51	37	37
	Percent Committed	31%	37%	51%	60%	41%	44%
IC 9-30-5-5 Causing Death	Guilty Citations	29	27	34	36	35	32
	DOC Commitments	29	27	24	28	29	27
	Percent Committed	100%	100%	71%	78%	83%	86%

Guilty Citations reported by the Bureau of Motor Vehicles  
Felony Commitments to DOC

The potential impact on the offender population will depend on the number of offenders who have felony convictions between five and ten years prior to the current conviction. Based on an analysis of the offenders in DOC facilities in January 2005, OWI offenders in DOC facilities with a prior OWI felony are shown with the time since the prior felony was committed.

<b>Table 4: Felony Offenders in DOC Facilities on January 11, 2005 Committed for OWI With Prior OWI Felony</b>				
When Previous Felony Was Committed				
	<u>Less than 5 Years</u>	<u>Between 5 and 10 Years</u>	<u>More than 10 Years</u>	<u>Total Offenders</u>
Offenders	85	27	9	121
Percent	76%	24%		

Tables 5, 6, and 7 show the possible change in DOC population if an additional 24% of the offenders will now have enhanced penalties (see Table 4:  $27/(84 + 27) = 24\%$ ). This bill would affect three different groups with OWI convictions between five and ten years prior to the most recent conviction:

- Offenders who are convicted of a Class A misdemeanor for OWI could now be sentenced as Class D felons for having a prior felony.
- Offenders who are convicted of a Class D felony for causing serious bodily injury would be sentenced as Class C felons.
- Offenders who are convicted of a Class C felony for causing death would now be sentenced as Class B felons.

It is assumed that these offenders remain in Credit Class 1 for the entire length of stay and receive at least a 50% time cut for good behavior.

Class A misdemeanants who might be committed to DOC are based on a five-year average of Class A misdemeanants who were issued guilty citations between 2000 and 2004. The percentage of repeat drunk drivers of 1/3 is based on a national study published by the National Highway Traffic Safety Administration. It is assumed that an additional 24% more offenders have a prior offense within five and ten years. Of these repeat OWI offenders, it was assumed that 26% might be committed to DOC based on the average percentage of offenders committed to DOC for OWI with a prior OWI between 2000 and 2004 (see Table 3). This bill would have an immediate impact in FY 2006 if the offenders serve nine months in prison. The estimated increase in beds needed is 275.

Class D felons who are convicted of OWI and causing serious bodily injury would be sentenced for an additional 1.25 years in DOC facilities based on presumptive sentences. The first year that this new population will affect DOC facilities will be in 2007.

Class C felons who are convicted of OWI and causing a death would be sentenced for an additional three years in prison. The presumptive sentence for a Class B felony is ten years, six more than the Class C felony presumptive of four years. The first year that this additional population will affect DOC facilities will be in 2009 and will reach its peak in 2011.

Current Penalty	New Penalty	Presumptive Term		Added Term*	First FY Affected
		Current	New		
Class A Misdemeanor	Class D Felony		1.5	0.75	2006
Class D Felony	Class D Felony	1.5	4	1.25	2007
Class C Felony	Class B Felony	4	10	3	2009

\* assumes 50% good time credit

	5-year avg. (Table 3)	% 5 to 10 yrs (Table 4)	% repeat	% committed to DOC (Table 3)	Added Term in Years	Added Offenders
OWI with Prior	19,456	24%	33%	26%	0.75	300
Serious Bodily Injury	37	24%			1.25	11
Causing Death	27	24%			3	19

	2006	2007	2008	2009	2010	2011	2012
Additional OWI with Prior	300	300	300	300	300	300	300
Serious Bodily Injury		9	11	11	11	11	11
Causing Death				6	12	18	18
Total New Offenders	300	309	311	317	323	329	329

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** If more offenders are sentenced to additional terms of either probation or community corrections, local caseloads would also increase. Since more offenders are sentenced to probation for OWI with a prior OWI rather than to DOC facilities, more probation officers may need to be hired at the local level.

**Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:** Trial Courts, Probation programs.

**Information Sources:** Department of Correction, "Repeat DWI Offenders in the United States", Technology Transfer Series, Number 85, February, 1995 National Highway Traffic Safety Administration.

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