

2009 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 2428 **STATUS:** Original
SUBJECT: Increases penalty for assault in third degree if defendant commits assault by means of motor vehicle and was driving while under the influence of intoxicants.
GOVERNMENT UNIT AFFECTED: Department of Corrections, Oregon Judicial Department and Public Defense Services Commission
PREPARED BY: Tim Walker
REVIEWED BY: Doug Wilson and John Borden
DATE: February 20, 2009

	<u>2009-2011</u>	<u>2011-2013</u>
EXPENDITURES: See Analysis.		

EFFECTIVE DATE: January 1, 2010

GOVERNOR'S BUDGET: This bill is not anticipated by the Governor's recommended budget.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

ANALYSIS: This bill would increase the penalty for assault in the third degree where the assault resulted from the defendant driving under the influence of intoxicants (DUII), from a Class C felony to a Class B felony with a crime seriousness level of 8, which would result in a prison sentence of 27 months. Currently this crime would be prosecuted as a Class C felony with a crime seriousness level of 6 which would result in a prison sentence of 22 months. On average, a Class B felony with a crime seriousness level of 8 results in a prison sentence 46% of the time and a Class C felony with a crime seriousness level of 6 results in a prison sentence 30% of the time. This bill would likely result in more prison sentences for a longer period of time.

This bill would likely result in the need for 4 additional prison beds at a cost of \$254,037 in 2009-11 and 26 additional beds at a cost of \$1,454,011 in 2011-2013. The prison bed impact would extend into 2013-15, with the additional bed requirement peaking at 30 beds at a cost of \$1,707,141 per biennium. The prison bed impact in 2009-11 would be from offenders who previously would not have been sentenced to prison. The full effect of the bill would not be seen until 2013-15.

The Public Defense Services Commission estimates an additional 100 cases per year, based upon estimates from the DOC from 2004 on the number of offenders who had co-occurring sentences of Assault III and DUII. The cost to defend a Class C felony is \$505 and for a Class B felony \$875. The difference of \$370 per case would translate into \$37,000 per year in additional costs to the agency.

Oregon Judicial Department anticipates that the increase from a Class C to a Class B felony will result in more trials, and possibly more appeals, due to the increased severity of the sanction. This could also increase the prosecution's leverage and make a plea bargain more likely. An increase in the quantity of trials would result in increased costs associated with judge time, jury expenses, interpreter costs, and the length and complexity of trials.