

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION  
Revision 1

April 14, 2003

**TO:** Honorable Joe Driver, Chair, House Committee on Law Enforcement

**FROM:** John Keel, Director, Legislative Budget Board

**IN RE: HB1611** by Riddle (Relating to the civil and criminal consequences of a person's refusal to consent to the taking of a blood or breath specimen to test for intoxication.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1611, As Introduced: a negative impact of (\$3,654,771) through the biennium ending August 31, 2005.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	(\$913,693)
2005	(\$2,741,078)
2006	(\$3,692,463)
2007	(\$3,749,002)
2008	(\$3,767,848)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from GENERAL REVENUE FUND 1
2004	(\$913,693)
2005	(\$2,741,078)
2006	(\$3,692,463)
2007	(\$3,749,002)
2008	(\$3,767,848)

**Fiscal Analysis**

The bill would amend the Transportation Code as it relates to the civil and criminal consequences of a person's refusal to consent to the taking of a blood or breath specimen to test for intoxication. The refusal to submit to taking of a specimen by a peace officer would be punishable as a Class A misdemeanor if the person has previously been convicted one time of various intoxication offenses. The refusal to submit to taking of a specimen by a peace officer would be punishable as a felony of the third degree if it is shown on the trail of the offense that the person has previously been convicted one time of intoxication manslaughter, or two prior convictions of other intoxication offenses.

The bill would apply to offenses committed after September 1, 2003.

**Methodology**

According to the Criminal Justice Policy Council (CJPC), in fiscal year 2002, 3,213 persons were

admitted to the Texas Department of Criminal Justice (TDCJ) for felony driving while intoxicated (DWI) offenses, while 3,925 persons were added to community supervision caseloads for felony DWI offenses. The 7,138 felony convictions for DWI offenses (3,213 admissions + 3,925 community supervision placements) were convicted as third degree felons, which means they had at least two prior convictions. Office of Court Administration (OCA) data indicates that 80% of felony DWI prosecutions ended in conviction (including probation revocation and shock probation) while 20% ended in acquittals or dismissals. Based on conviction data from TDCJ and the OCA, it is estimated that 1,785 persons charged with third degree felony DWI were dismissed in fiscal year 2002. The Department of Public Safety (DPS) estimates that 40 to 50 percent of persons arrested for suspected DWI refuse to submit to taking of a specimen. For the purpose of this analysis, it is conservatively estimated that 15% ( $268 = 1,785 \times 0.15$ ) of the persons currently acquitted or dismissed would be convicted of felony DWI due to the provisions of the bill.

In order to estimate the future impact of the proposal, the changes proposed for admission and release policy are applied in a simulation model, to (1) prison admissions that reflect the distribution of offenses, sentence lengths, and time served, and (2) increased number of people on community supervision, due to the increased number of felony DWI offenders placed on community supervision during the time period of the analysis. Included in the estimated costs is projected community supervision operating costs.

Costs of incarceration by the Department of Criminal Justice are estimated on the basis of \$40 per inmate per day for prison facilities, reflecting approximate costs of either operating facilities or contracting with other entities. No costs are included for prison construction. Options available to address the increased demand for prison capacity that would result from implementation of this bill include construction of new prisons and contracting with counties or private entities.

### **Local Government Impact**

The Texas Department of Public Safety (DPS) reported that 66,450 persons were arrested in Texas for first time DWI offenses in 2002. The offense of driving while intoxicated is currently punishable as a Class B misdemeanor, unless the offender has two or more prior convictions, in which case the offense would be punishable as a felony of the third degree. The bill would enhance the punishment for persons with one previous conviction for various intoxication offenses to a Class A misdemeanor if the person refuses to submit to the taking of a specimen. A Class B misdemeanor is punishable by confinement in county jail for a term not to exceed 180 days, a fine not to exceed \$2,000, or both fine and confinement. A Class A misdemeanor is punishable by confinement in county jail for a term not to exceed one year, a fine not to exceed \$4,000, or both fine and confinement. By increasing the punishment level for DWI offenses identified by this bill, local governments would experience an increase in revenue from fines related to these offenses. Offsetting the potential increase in fine collections, however, is the potential for costs from increased county jail populations, since the possible term of incarceration would increase. Costs to local governments to implement the bill could be significant and would vary by county depending on the number of these types of offenses occurring and judicial discretion in the imposition of jail time and fines.

**Source Agencies:** 405 Department of Public Safety, 410 Criminal Justice Policy Council

**LBB Staff:** JK, WP, WK, VDS, AR, KG, GG