



HOUSE COMMITTEE ON APPROPRIATIONS

2009-10 Legislative Session

FISCAL NOTE

HOUSE BILL: 2246

PRINTER'S NO: 3188

PRIME SPONSOR: Tallman

FISCAL IMPACT SUMMARY	FY 2009/10	FY 2010/11
Estimated Expenditure Increase/(Decrease):		
General Fund	\$0	\$405,000*
County Costs	\$0	\$1,277,450*
Estimated Revenue Increase/(Decrease):		
Motor License Fund		See Analysis
Local Government Funds		See Analysis

*Assumes half-year costs due to implementation lags. See analysis for subsequent year costs.

OVERVIEW:

This bill amends Title 75 (Vehicles), Pa.C.S., to create: (1) a sentence enhancement for certain homicides by vehicle and (2) a new offense of aggravated assault by vehicle.

First, the bill amends Section 3732 to include the sentence enhancement of up to an additional five years of confinement if the convicted person also violated Section 3325 (relating to duty of driver on approach of emergency vehicle) or Section 3327 (relating to duty of driver in emergency response area). The current grading for this offense, not amended by this bill, is a felony of the third degree. The Vehicle Code defines homicide by vehicle while under the influence of alcohol or controlled substances as a separate offense under Section 3735.

Second, the bill creates a new Section 3732.1 defining the offense of aggravated assault by vehicle as a third degree felony. The Vehicle Code currently in Section 3735.1 defines aggravated assault by vehicle only for driving under the influence of alcohol or other controlled substance. This proposed new section includes sentence enhancements of up to two years if the offense occurred in an active work zone or if the convicted person also violated Section 3325 (relating to duty of driver on approach of emergency vehicle) or Section 3327 (relating to duty of driver in emergency response area). The bill requires the Pennsylvania Commission on Sentencing to provide guidelines for these sentence enhancements.

The bill clarifies the definition of emergency service responder making it uniform throughout the Vehicle Code.

Section 1103 of Title 18 (Crimes and Offenses), Pa.C.S., provides that those convicted of a felony of the third degree may receive a penalty of up to seven years in prison, and Section 1101 of Title 18 provides that those convicted of a felony of the third degree may be sentenced to pay a fine of up to \$15,000.

The effective date is sixty days.

ANALYSIS:

This analysis assumes an effective date of July 1, 2010. The impact from sentencing, however, will not occur immediately but sometime later during the fiscal year because law enforcement and the court system will need time to catch up to the offense and new sentencing guidelines. To make the calculations easier to understand, it is assumed that the costs will begin January 1, 2011, representing half a fiscal year.

This bill will have an impact on correctional costs. According to data provided from the Pennsylvania Commission on Sentencing, the following table summarizes the average annual convictions for calendar years 2006, 2007, and 2008:

Average Annual Convictions for 2006, 2007, and 2008		
Violation	Description	Convictions
Section 3732	Homicide by Vehicle	82
Section 3735	Homicide by Vehicle DUI	45
Section 3735.1	Aggravated Assault by Vehicle DUI	115

Assuming that convictions for the proposed offense of aggravated assault by vehicle will be related to the number of convictions in Sections 3735.1 in the same proportion that Section 3732 is to Section 3735, there will be on an estimated annual average of 217 convictions.

The table below summarizes the percent of convicted persons for violations of Sections 3732, 3735, and 3735.1 that were sent to state prison, county prison, or county probation and other punishment.

Violation	Felony	Description	State Prison	County Prison	County Other
Section 3732	3rd Degree	Homicide by Vehicle	37.7%	39.7%	22.7%
Section 3735	2nd Degree	Homicide by Vehicle DUI	97.1%	2.9%	0.0%
Section 3735.1	2nd Degree	Aggravated Assault by Vehicle DUI	32.7%	43.6%	23.7%

Based on the data in the table above, it is estimated that 27 of the 219 convictions pursuant to the proposed Section 3732.1 will be sent to state prison. This was calculated by reducing the percentage in Sections 3735.1 for state prison in the same proportion that Section 3732 is to Section 3735. The average state cost for sending a person to state prison is \$30,000. The cost to the General Fund, therefore, is \$810,000 in the first full year. Because of the implementation delay explained at the beginning of the analysis section, the cost would be an estimated \$405,000 for FY 2010/11. This amount will increase in subsequent years depending on the length of the sentences served. For example, if the convicted persons serve two years in prison, the second full year cost would be \$1.6 million.

If 24% of those convicted also are sentenced under the "County Other" category, which is essentially the percentage found for Sections 2732 and 3735.1, then 52 of the estimated 217 convicted persons would serve a sentence other than state or county prison. This will likely consist mostly of probation. The cost to the counties to monitor a person on probation is roughly \$700 per person. This yields a cost of \$36,400 to the counties for the first full year. Because of the implementation delay explained previously, the cost would be an estimated \$18,200 for FY 2010/11. The length of probation varies and will determine how much the cost will escalate over the years. If the length of probation is twenty-four months, then the cost for the second full year would be \$72,800.

Finally, the prison cost to the counties is estimated to be \$2,518,500 for the first full year. Because of the implementation delay explained previously, the cost would be an estimated \$1,259,250 for FY 2010/11. This is based on the estimated 138 persons who would be convicted multiplied by \$18,250 for the full year. Again this cost will increase in subsequent years due to the length of sentences actually served.

The total cost to the counties due to the new Section 3732.1, therefore, will be an estimated \$2,554,900 in the first full year. Because of the implementation delay explained previously, the cost would be an estimated \$1,277,450 for FY 2010/11.

Title 18 allows courts to impose fines up to \$15,000 for third degree felonies which, if imposed and collected, may offset some of the implementation costs. Typically, however, fines are imposed infrequently, and when they are, they are seldom at the maximum amounts and seldom collected. For Section 3732 (homicide by vehicle), for example, fines were imposed only twenty-five percent of the time in 2008 for a total of \$14,252 for all 76 convictions, or an average of only \$187.52 per conviction. The database used does not report the actual amount collected, but past experience shows collection rates for criminal offenses are overall very poor. This fiscal note does not assume any offsetting revenue from fine collections because of the unreliability and minimal amounts derived from such collections. Section 3571 of Title 42 (Judiciary and Judicial Procedure), Pa.C.S., regulates the disposition of the fine revenue, which specifies that fine revenue from vehicle offenses are deposited in the Motor License Fund with half being distributed to the municipality where the police action occurred if it was enforced by a local police officer, or, if due to State Police action, distributed to all municipalities via the formula in section 4 of the act of June 1, 1956 (P.L.1944, No.655), relating to partial allocation of liquid fuels and fuel use tax proceeds, also known as the Liquid Fuels Distribution Formula.

There is another unquantifiable factor impacting the revenue received. An offense that can be classified as aggravated assault by vehicle can be charged now under a number of different offenses ranging from careless driving (Section 3714), which has a \$250 fine if resulting in serious bodily harm, to reckless driving (Section 3736), which has a \$200 fine, or to simple or aggravated assault under Sections 2701 and 2702 of Title 18.. There were 95 cases in 2008 of persons convicted of careless driving resulting in serious bodily harm. Nonetheless, it is not known how many of these cases might be charged under the new offense, or how many of the 1,355 reckless driving convictions resulted in bodily harm and how many of those offenses might be charged under the new offense, or, finally, how many assault charges under Title 18 might fall under the new offense. The net fiscal impact of the anticipated substituting effect by creating this new offense, therefore, is unquantifiable. It can be concluded, however, that for the substitution effect with Sections 3714 and 3736 of Title 18, the fiscal impact will be a loss of fine revenue plus correction costs of imprisonment or probation.

The proposed sentence enhancement to Section 3732 (Homicide by Vehicle) will not immediately impact state or county budgets because the sentence enhancements are tacked onto the end of the sentences the convicted persons would receive. The average sentences imposed for those sent to state prison are a minimum of 17.2 months and a maximum of 43.4 months. The average sentences for county prison are a minimum of 9.9 months and a maximum of 26.2 months. Any fiscal impact, therefore, would not be realized until at least a year after implementation.

The exact amount of the impact to Section 3732 is difficult to estimate. As shown in the first table above, on average there have been 82 convictions per year for homicide by vehicle. What is not known, however, is what percent of these convictions were also guilty of violating Section 3325 (relating to duty of driver on approach of emergency vehicle) or Section 3327 (relating to duty of driver in emergency response area). This data is not captured. If it is ten percent, which there is no basis to assert, then there might be eight persons a year subject to the sentence enhancement. Per each person convicted and sent to state prison, the cost is \$30,000 for each year of the enhanced sentence served (not adjusting for inflation). For the counties, the cost is \$18,250 for each year of the enhanced sentence served (not adjusting for inflation).

The portions of the bill clarifying the definition of emergency service responder making it uniform throughout the Vehicle Code have no fiscal impact.

The Pennsylvania Commission on Sentencing and the Administrative Office of Pennsylvania Courts provided the data used in this fiscal note. The prison and probation costs are standard estimates used by this Committee based on data provided by the Pennsylvania Department of Corrections and the counties.

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General Note and Disclaimer: *This Fiscal Note was prepared pursuant to House Rule 19(a), and the elements considered and reported above are required by Section 5 of the rule. Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*