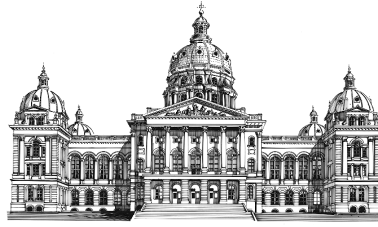


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# Iowa Legislative Fiscal Bureau

Dennis Prouty  
(515) 281-5279  
FAX 281-8451



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## Impact of Changing Iowa's Operating While Intoxicated (OWI) Statute

### ISSUE

This *Issue Review* examines the fiscal and correctional impact of changing Iowa's OWI statute from a blood-alcohol content level of .10 percent to .08 percent.

### AFFECTED AGENCIES

Department of Transportation (DOT)  
Department of Public Safety (DPS)  
Department of Corrections (DOC)  
Department of Public Health (DPH)  
Office of the State Public Defender

### CODE AUTHORITY

23 U.S.C. §§ 163, 410  
Chapter 321J.2, Code of Iowa

### BACKGROUND

Chapter 321J.2, Code of Iowa, states that a person commits the offense of OWI if the person operates a motor vehicle while having a blood-alcohol content level of .10 or more. Although it is not specified in the Code of Iowa, the .10 law is a "per se" law, meaning that a blood-alcohol content level at or above .10 is a violation in and of itself and impairment need not be demonstrated.

During the 2002 Legislative Session, SF 2144 was introduced to change Iowa's blood-alcohol content level from .10 to .08, but the Bill was not enacted. Since Iowa does not have a .08 per se law, the State is not in compliance with Section 163 of the federal Transportation Equity Act of the 21<sup>st</sup> Century.

Pursuant to Section 163 of the Act, states may qualify for federal incentive funds by enacting a .08 per se law by July 15, 2003, and enforcing the law by September 30, 2003. The incentive funds are restricted to highway-related projects, including safety programs. If states do not adopt a .08 per se law by October 1, 2003 (FFY 2004), states are subject to sanctions, including the withholding of certain highway construction funds.

The Transportation Equity Act of the 21<sup>st</sup> Century will be reauthorized on October 1, 2003 (FFY 2004). When reauthorization occurs, the following information may change.

### **STATE QUALIFICATIONS FOR SECTION 163 FUNDS**

In order to qualify for Section 163 funds, states must meet the following six criteria in relation to OWI statutes:

1. The law must apply to any person.
2. A state must set a level of no more than .08 percent as the legal limit for blood-alcohol content level.
3. A state must establish a .08 "per se" law that makes driving with a blood-alcohol content level of .08 or above, in and of itself, an offense.
4. A state must enact and enforce a .08 blood-alcohol content level law that provides for primary enforcement. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without showing probable cause or that the offender was cited for a violation of another offense. Any state that provides for secondary enforcement of its .08 blood-alcohol content provision will not qualify for funds under Section 163.
5. A state must establish a .08 blood-alcohol content per se level under its criminal code. In addition, if the state has an administrative license revocation law, the state must establish an illegal .08 blood-alcohol content per se level under this law as well.
6. A state's .08 blood-alcohol content level per se law must be deemed to be or equivalent to the state's standard driving while intoxicated offense.

### **BUDGET IMPACT**

The following information on the budget impact of changing the OWI law from .10 to .08 was prepared for SF 2144 during the 2002 Legislative Session.

#### **Correctional Impact**

If a .08 law is adopted during FY 2004, it is estimated there will be an additional 184 OWI First Offense convictions (serious misdemeanor), 55 OWI Second Offense convictions (aggravated misdemeanor), and 22 OWI Third Offense convictions (Class D felony). During FY 2005 (annualized impact), it is estimated there will be an additional 367 OWI First Offense convictions, 109 OWI Second Offense convictions, and 44 OWI Third Offense convictions. Also, during FY 2005, it is estimated there will be one less Vehicular Homicide OWI conviction (Class B) and one less Serious Injury OWI conviction (Class D).

During FY 2004, it is estimated there will be an additional 260 people convicted for these offenses. These offenders will be sentenced as follows: five to prison, 13 to community-based correctional (CBC) facilities, 162 to probation, and 182 to jail. Certain offenders will receive split sentences.

During FY 2005 (annualized impact), it is estimated there will be an additional 519 convicted offenders sentenced as follows: 10 to prison, 24 to CBC facilities, 323 to probation, and 363 to jail. Certain offenders will receive split sentences.

New admissions to the State prison system will increase by five during FY 2004 and ten each year thereafter. Most of these inmates will stay in prison 60 days on average. The prison population will not significantly change during FY 2004 compared to FY 2003. It will decrease by two inmates during FY 2005 and will decrease by three inmates in FY 2008.

New admissions to CBC facilities will increase by 13 in FY 2004, and 24 each year thereafter. This will increase the number of offenders on waiting lists, which will increase the need for additional OWI treatment beds. Admissions to street supervision will increase by 162 in FY 2004 and 323 each year thereafter.

New admissions to county jails will increase by 182 in FY 2004 and 363 each year thereafter.

### **State and Local Government Fiscal Impact**

Based on information prepared during the 2002 Legislative Session, if Iowa were to enact a .08 per se law during the 2003 Legislative Session, estimated costs to the State General Fund and local governments are expected to increase as detailed below.

#### State General Fund

Total costs are estimated to be \$426,000 in FY 2004 and \$852,000 in FY 2005. The estimated costs are as follows:

- State prison costs are estimated to increase by \$5,000 in FY 2004 and \$10,000 in FY 2005.
- CBC facility costs for the OWI treatment program are estimated to increase by \$35,000 in FY 2004 and \$65,000 in FY 2005. These estimates do not include construction of additional CBC beds, if required.
- Probation and parole costs are estimated to increase by \$145,000 in FY 2004 and \$300,000 during FY 2005.
- Court costs are estimated to increase by \$26,000 in FY 2004 and \$52,000 in FY 2005.
- Indigent defense costs are estimated to increase by \$123,000 in FY 2004 and \$241,000 during FY 2005.
- Substance abuse treatment costs are expected to increase by \$92,000 in FY 2004 and \$184,000 in FY 2005.

#### Local Governments

There is an estimated annual increase in jail days of 4,428 that results in an estimated increase of \$66,000 (4,428 x \$15.00 per day) to \$111,000 (4,428 x \$25.00 per day). The estimated cost of additional jail days is as follows:

- 1,771 additional jail days for OWI First Offense convictions (253 additional admissions for OWI First Offense convictions, with an average length of stay of seven days).
- 1,392 additional jail days for OWI Second Offense convictions (87 additional admissions for OWI Second Offense convictions, with an average length of stay of 16 days).
- 1,265 additional jail days for OWI Third Offense convictions (23 additional admissions for OWI Third Offense convictions, with an average length of stay of 55 days).

### Department of Transportation Fiscal Impact

The estimated fiscal impact of enacting a .08 per se law during the 2003 Legislative Session is expected to result in increased revenue due to highway incentive funds.

If Iowa were to enact a .08 per se law by July 15, 2003, and adhere to the six criteria under Section 163 and begin enforcement by September 30, 2003, the State would receive incentive funds for FFY 2003. Iowa would not receive the funds, however, until FFY 2004. Depending on the number of states with a .08 per se law at the time Iowa's law is enacted, Iowa could receive between an estimated \$1.4 to \$2.1 million. The incentive would be issued to the DOT and restricted to highway-related projects, including safety programs. Incentive program funding will sunset on September 30, 2003.

As more states become eligible for incentive grants, the amount received by each state will decrease. Additionally, those states that qualified for and received grant funds in FFY 1998 will continue to receive funds through FFY 2003, as long as they remain in compliance with Section 163.

As of September 2002, 34 states have adopted .08 per se laws and are in compliance with Section 163. Sixteen states, including Iowa, are not in compliance. Those states include Colorado, Delaware, Massachusetts<sup>1</sup>, Michigan, Minnesota, Montana, Nevada, New Jersey, New York, North Dakota, Ohio, Pennsylvania, South Carolina, West Virginia, and Wisconsin.

If Iowa adopts a .08 per se law by October 1, 2003 (FFY 2004), the State will continue to receive its full allotment of federal highway funds, which is estimated at \$228.0 million for FFY 2004. If Iowa does not adopt the .08 per se law by October 1, 2003, federal highway funds will be withheld in the projected amounts listed below, which are based on the estimate of \$228.0 million. If Iowa adopts the law by October 1, 2007 (FFY 2008), the State will be reimbursed any lost funds.

- \$4.6 million (2.0%) would be withheld for FFY 2004, including \$3.0 million from the State and \$1.6 million from cities and counties.
- \$9.1 million (4.0%) would be withheld for FFY 2005, including \$5.9 million from the State and \$3.2 million from cities and counties.
- \$13.7 million (6.0%) would be withheld for FFY 2006, including \$8.9 million from the State and \$4.8 million from cities and counties.
- \$18.2 million (8.0%) would be withheld for FFY 2007 and beyond, including \$11.8 million from the State and \$6.4 million from cities and counties.

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<sup>1</sup> Massachusetts has no criminal per se law, but has adopted a .08 administrative per se law for the purposes of administrative license revocation.

**FUTURE FUNDING ISSUES**

The Department of Public Safety currently receives approximately \$660,000 annually in an Alcohol-Impaired Driving Countermeasure Incentive Grant for complying with Section 410 of the Transportation Equity Act of the 21<sup>st</sup> Century. The General Assembly may wish to consider the potential impact of amending Iowa's OWI statute as it relates to Iowa's federal 410 funds, which could be jeopardized depending on the nature of any proposed amendments.

STAFF CONTACT: Mary Beth Mellick (Ext. 18223)

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<http://staffweb.legis.state.ia.us/lfb/IRVIEW/irview.htm>  
LFB: IRMBM002.Doc/12/04/4:10 pm