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**SF 113** – Operating While Intoxicated, Noll Fix (LSB1350SV)  
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Fiscal Note Version – New

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### **Description**

[Senate File 113](#) provides that a person convicted of a third or subsequent operating-while-intoxicated (OWI) offense may be sentenced as a habitual offender pursuant to Iowa Code sections [902.8](#) and [902.9](#) if the person qualifies as a habitual offender as described in Iowa Code section [902.8](#).

### **Background**

Under current law, Iowa Code section [321J.2\(2\)\(c\)](#) provides that a third or subsequent OWI offense is a Class D felony, punishable by confinement not to exceed five years with a mandatory minimum term of 30 days, assessment of a fine between \$3,125 and \$9,375, revocation of the person's driver's license for six years, assignment to substance abuse evaluation and treatment, a course for drinking drivers, and a reality education substance abuse prevention program.

Iowa Code section [902.8](#) provides that a habitual offender is any person convicted of a Class C or D felony, who has twice before been convicted of any felony. The maximum sentence for a habitual offender is confinement for no more than 15 years, and the minimum is three years confinement.

The recent Iowa Supreme Court decision in [Noll v. Iowa Dist. Court for Muscatine County](#)<sup>1</sup> held that the maximum sentences set forth in Iowa Code section [321J.2\(5\)](#) for a third OWI offense represent the General Assembly's intent to preclude sentencing a person convicted of a third or subsequent OWI offense as a habitual offender. Prior to this ruling, the habitual offender statute was applied to qualifying OWI third or subsequent offenses.

### **Assumptions**

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner length of stay; revocation rates; plea bargaining; and other criminal justice system policies and practices.
- A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.

### **Correctional Impact**

[SF 113](#) may increase the number of individuals who enter prison. Under this Bill, if the habitual offender sentence enhancement is applied to offenders who have two prior felonies and an OWI third, the offender would be admitted to prison instead of residential treatment or probation.

**Table 1** shows the current number of active OWI third offenders with two or more prior felonies and the type of sentence received. The Department of Corrections has indicated it is difficult to

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<sup>1</sup> 919 N.W.2d 232 (Iowa 2018).

estimate the proportion of OWI third offenders who have prior felonies and would qualify for habitual offender status under this provision. In addition, application of the enhanced status is under the discretion of the County Attorney and as a result, it is difficult to determine how many of those who qualify for habitual offender sentences would receive enhanced status.

**Table 1 — Active OWI 3rd Offenders with Two or More Prior Felonies by Sentence Received**

Sentence Received	OWI 3rd Offenders with Two or More Prior Felonies
Prison	209
OWI Continuum – Residential	70
Probation	95
<b>Total</b>	<b>374</b>

The length of stay for qualifying offenders would increase under the enhanced sentence. In FY 2018, OWI third offenders stayed in prison for approximately 7.9 months. Under this Bill, the average length of stay could increase to 18 months.

It is important to note that prior to the *Noll* case, the habitual offender statute was previously applied to OWI third sentences. The implementation of [SF 113](#) would allow this practice to resume. As a result, the increase in prison populations may be minimal due to this prior existing practice.

**Minority Impact**

The minority impact of [SF 113](#) is unknown. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 7, 2019, for information related to minorities in the criminal justice system.

**Fiscal Impact**

The fiscal impact of [SF 113](#) cannot be determined due to the inability to estimate the proportion of OWI third offenders who have prior felonies and would qualify for a habitual offender sentence and receive enhanced status. It should be noted that prior to the *Noll* case, the habitual offender statute was applied to OWI third sentences and the implementation of [SF 113](#) would allow this practice to resume. As a result, the increase in prison populations and fiscal impact to the Department of Corrections may be minimal due to this prior existing practice.

**Table 2** shows the difference in total prison costs between one OWI third sentence and a Habitual Offender enhanced sentence.

**Table 2 — Average Length of Stay Marginal Prison Cost Difference**

	Length of Stay (months)	Marginal Costs/Day Prison	Prison Costs
OWI 3rd	7.9	\$18.43	\$4,368
Habitual Offenders	18	\$18.43	\$10,100
<b>Cost Difference</b>	—	—	<b>\$5,732</b>

**Sources**

LSA Analysis  
 Criminal Juvenile Justice Planning Division, Department of Human Rights  
 Department of Corrections  
 Iowa County Attorney Association

/s/ Holly M. Lyons

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February 4, 2019

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The fiscal note for this Bill was prepared pursuant to Joint Rule 17 and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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