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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/15

SPONSOR Maestas Barnes **LAST UPDATED** _____ **HB** 359

SHORT TITLE Increase Penalties for 4th and Subsequent DWIs **SB** _____

ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See narrative					

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB3, HB86, HB120, SB499, Conflicts with HB355
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Public Defender Department (PDD)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 359 proposes to amend the following subsections of Section 66-8-102 NMSA 1978 increasing the terms of imprisonment for driving under the influence.

- A fourth conviction changing the imprisonment term from 18 to 30 months, 2 years which shall not be suspended, deferred or taken under advisement;
- A fifth conviction changing the imprisonment term from two years to 3 years, 18 months which shall not be suspended, deferred or taken under advisement;
- A sixth conviction changing the imprisonment term from 30 months to 42 months, 30 months which shall not be suspended, deferred or taken under advisement;
- A seventh conviction changing the imprisonment term from 3 years to 4 years, 3 years which shall not be suspended, deferred or taken under advisement;
- A eight or subsequent conviction adding imprisonment term of 12 years, 10 years which shall not be suspended, deferred or taken under advisement.

FISCAL IMPLICATIONS

The average cost to incarcerate one offender annually in a New Mexico prison is approximately \$40.2 thousand. On June 30, 2014, the NMCD had 122 offenders serving sentences for felony. It costs the state \$4.9 million to incarcerate 122 DWI felony offenders in 2014. If the number of individuals sentenced under this proposed change to the law continues and the average annual cost to incarcerate an inmate increases 3 percent, those same 122 inmates will cost the state an additional \$147 thousand each year until released.

The NMCD reports that the fiscal impact to FY through FY17 is minimal and that costs only increase if the number of admissions is greater than the number of releases.

The NMCD reports a deficit in the millions of dollars for FY15, which with decreased available revenue may continue into FY16.

The cost to provide treatment to DWI offenders through a drug court program the individual commits an offense that will require imprisonment is approximately \$9.43 per participant.

The PDD reports that there are likely to be the same amount of prosecutions at the increased level for these offenses, so an increased impact is envisioned. If PPD continues to contract conflict and overflow cases on the basis of the level of felony charged, higher penalty felonies would cost more to defend. Moreover, higher penalty cases (while often pled down) are somewhat more likely to go to trial. While it is likely that PDD would be able to absorb some increase in the penalty severity of DWI convictions under the proposed amendments, any increase in LOPD expenditures brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

The AODA states that whenever penalties are increased it is inevitable that more cases are resolved by litigation instead of by pleas because enhanced penalties and certainty they will be imposed mean there is less incentive to plead guilty. If HB 359 is enacted, it could result in more jury trials and more appeals and the district attorneys,' defenders' and district and appellate courts' workloads will probably all be increased. This is more likely than ever since the proposed penalties and minimum mandatory incarceration periods are noticeable increases over the punishment specified in the current DWI law. Because every felony DWI conviction would have a mandatory incarceration period that, presumptively, must be served in the NMCD the population of the state prisons would almost certainly increase. There might be a slight decrease in the county jails' inmate populations since persons who could have previously served their sentence in jail would have to serve it in NMCD if this bill becomes law.

SIGNIFICANT ISSUES

According to the NMSC, on June 30, 2014, 122 offenders committed to the custody of the NMCD had a felony DWI as their highest charge. That total reflects admissions for a new charge. If enacted, the increased sentence lengths proposed in HB 359 would impact the New Mexico prison population.

The AOC reports that increased jail time will prompt defendants to seek and prosecutors to be pressured to offer more plea bargains. Defendants may also decide to take their cases to trial

particularly when facing significant jail time. More DWI trials will likely impact magistrate, metropolitan and district court dockets.

PERFORMANCE IMPLICATIONS

The following performance measures for the NMCD may be impacted by this bill

- Percent of prisoners reincarcerated back into the corrections department within thirty-six months due to technical parole violations.
- Percent of prisoners reincarcerated back into the corrections department system within thirty-six months due to new charges or pending charges.
- Percent of sex offenders reincarcerated back into the corrections department within thirty-six months.

The bill may also impact “Percent of felony cases resulting in a reduction of original formally filed charges” performance measure at the PDD.

CONFLICT, RELATIONSHIP

Relates to HB30 (Alcohol Sales to Interlock Licensees); HB120 (DWI for Certain Drugs and Interlocks); HB86 (DWI Interlock Removal Requirements); SB499 (DWI with Minors in Vehicle)

Conflicts with HB355 (Increase DWI Penalties)

ABS/aml