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## FISCAL IMPACT REPORT

SPONSOR: Rawson DATE TYPED: 02/20/01 HB \_\_\_\_\_  
 SHORT TITLE: Habitual DWI Offender Sentencing SB 344  
 ANALYST: \_\_\_\_\_

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	GF

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

State Highway and Transportation Department (SHTD)  
 Department of Public Safety (DPS)  
 Public Defender (PD)  
 Taxation and Revenue Department (TRD)  
 Attorney General (AG)  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

The Habitual DWI Offender Sentencing bill would amend Section 31-18-17 of the Criminal Sentencing Act to explicitly provide that a felony DWI conviction under NMSA 1978 Section 66-8-102 is a prior felony conviction for purposes of habitual offender sentencing. This bill would also amend Section 66-8-102 to provide that (1) the mandatory minimum portion of a person's sentence shall be served and (2) offenders convicted for a second or subsequent offense are required to complete a thirty-day inpatient treatment program or a sixty-day outpatient treatment program approved by the court.

#### Significant Issues

This bill may lead to a significant transfer of federal highway funds from general use to specific uses. The specific uses include alcohol-impaired driving countermeasures and law enforcement costs.

### FISCAL IMPLICATIONS

If the state laws relating to repeat DWI offenders do not meet federal regulations, the state will be subject to transfer of federal highway construction funds. Currently, New Mexico law is not in compliance with federal requirements for mandatory penalties applied to DWI repeat offenders. All states are required to be in compliance with federal requirements by October 1, 2001.

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If the state does not comply by October 1, 2001, 1.5% of federal highway construction funds (approximately \$3 million dollars ) will be transferred to the Traffic Safety Program or Hazard Elimination Program in federal fiscal year 2002. The transfer increases to 3.0% (approximately \$6 million dollars) in federal fiscal year 2003.

The total cost to the Public Defender Department of this bill is estimated to be \$1,888,746 for appeals, felony trials, Metropolitan court appeals and Metropolitan/Magistrate court trials. Additionally, it would require statewide training for all effected PD personnel at a cost of an additional \$5,000.

### **ADMINISTRATIVE IMPLICATIONS**

Based on the public Defender Department's experience in 1994 when the penalties for fourth and subsequent DWI convictions were first raised to a felony level, the Department saw a substantial increase in its workload at both the trial and appellate levels.

It will cost the judicial system \$400 for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the habitual offender prosecutions commenced under this new law.

### **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

Conflicts with SB306, SB305, HB457; HB381

### **TECHNICAL ISSUES**

See Other Substantive Issues below.

### **OTHER SUBSTANTIVE ISSUES**

In order to prevent a transfer of federal funds, federal law requires as follows:

An individual convicted of a second or subsequent offense for driving under the influence after a previous conviction for that offense shall:

- (A) receive a driver's license suspension for not less than 1 year;
- (B) be subject to the impoundment or immobilization of each of the individual's motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;
- (C) receive an assessment of the individual's degree of abuse of alcohol and treatment as appropriate;
- (D) receive:
  - (i) in the case of the second offense--
    - (I) an assignment of not less than 30 days of community service; or
    - (II) not less than 5 days of imprisonment; and
  - (ii) in the case of the third or subsequent offense:
    - (I) an assignment of not less than 60 days of community service; or
    - (II) not less than 10 days of imprisonment.

FAR/njw