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FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 2/5/2004 HB 94/HJCS

SHORT TITLE DWI Amendment Reconciliation SB _____

ANALYST Bransford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			Indeterminate		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 144 and SB 207
Conflicts with SB 99

SOURCES OF INFORMATION

LFC Files

Response Received From

Attorney General (AG)
Corrections Department (CD)
Department of Transportation (DOT)
Public Defender Department (PDD)
Administrative Office of the Courts (AOC)
Department of Public Safety (DPS)
New Mexico Sentencing Commission (NMSC)
Department of Health (DOH)
Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 94 reenacts the amendments signed into law during the 2003 session, but repealed by a subsequent bill and contains an emergency clause. The legislation increases the penalties for driving under the influence of intoxicating liquor or drugs (DWI) and creates new penalties for subsequent convictions. It also expands elements of aggravated DWI, provides sanctions for probation violations, and mandates and clarifies treatment provisions for offenders. Specifically the amendments to Section 66-8-102 NMSA 1978:

- Lowers the legal blood/breath alcohol concentration for a person who drives a commercial vehicle from .08 to .04;
- Expands aggravated DWI to include: a person under the influence, who is incapable of driving safely with one or more passengers under eighteen;
- Provides sanctions for probation violators;
- Increases the mandatory sentence from 72 hours to 96 hours for a second conviction;
- Increases, the sentence for a fourth DWI conviction 18 months, six months mandatory;
- Adds a new sentence of two years for a fifth DWI conviction of a fourth degree, one year mandatory;
- Adds a new sentence of 30 months for a sixth DWI conviction making it a third degree felony, 18 months mandatory;
- Adds a new sentence of three years for a seventh DWI conviction making it a third degree felony, two years mandatory;
- Mandates the Department of Finance and Administration to approve all alcohol and drug abuse screening programs;
- Mandates court-approved inpatient and outpatient treatment upon a second or third conviction;
- Mandates the Corrections Department to provide substance abuse counseling and treatment for offenders guilty of a felony DWI conviction, including those on probation and parole; and
- Adds a definition for commercial motor vehicle for this section.

Significant Issues

DOT reports that if New Mexico does not comply with federal law requiring blood/breath alcohol concentration of .04 for a person driving a commercial vehicle the Department's Federal Highway Construction Fund will be withheld at a rate of 5 percent or \$8.4 million the first year and 10 percent or \$16.8 million each year after.

The Motor Transportation Division (MTD) reports that failure to comply with federal commercial driver requirements may result in a loss of federal funds for enforcement as well.

FISCAL IMPLICATIONS

The Corrections Department reports that implementing the bill will have an indeterminate fiscal impact on the department because it will be required to provide substance abuse treatment to felony DWI offenders in its custody or on probation and parole. The bill will also result in longer and perhaps more prison sentences.

The PDD and DAs report that as penalties increase more cases will go to trial. However, both agree that it is impossible to predict future caseloads and therefore neither is requesting additional resources at this time.

ADMINISTRATIVE IMPLICATIONS

AOC reports that there will be an administrative impact on the courts which will require an unspecified amount of resources and time to hear additional cases.

CONFLICT AND RELATIONSHIP

This legislation relates to SB 144 and SB 207. It conflicts with SB 99 in the penalties for second convictions (five days for a second offense, 10 days for aggravated second offense). SB99 has no provision for fifth, sixth or seventh convictions. The bills all require treatment for second and third convictions but SB 99 requires 30 days inpatient and 60 days outpatient treatment. SB 99 does not require CD to provide substance abuse counseling or treatment.

OTHER SUBSTANTIVE ISSUES

The AG reports that passing this bill will clarify legislative intent at issue in the State v. Anaya where the Supreme Court ultimately ruled that legislative intent was not clear and therefore a special kind of felony had been created not subject to habitual offender enhancement. This bill does not treat DWI repeat felony offenders the same as all other repeat felony offenders for purposes of habitual offender enhanced penalties.

VB/dm:yr