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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/07

SPONSOR Cravens LAST UPDATED _____ HB _____

SHORT TITLE DWI As Prior Felony For Sentencing SB 441

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 451

SOURCES OF INFORMATION

LFC Files

Responses Received From

Corrections Department (NMCD)
 Public Defender Department (PD)
 New Mexico Sentencing Commission
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

This bill amends the Habitual Offender Sentencing Act, NMSA 1978, § 31-18-17 to include a prior DWI felony conviction under the DWI statute, NMSA 1978, § 66-8-102, as a “useable” prior for enhancement purposes.

FISCAL IMPLICATIONS

Under the current habitual offender statute, persons convicted of more than one noncapital felony are considered habitual offenders whose basic sentences (for subsequent felonies) are increased by one year (for a second felony), four years (for a third felony) and eight years (for a fourth or subsequent felony). However, under the current statute, DWI felony convictions pursuant to Section 66-8-102 are not considered felony convictions for purposes of determining habitual offender status/sentence enhancement.

The bill amends the habitual offender statute to require that a DWI conviction pursuant to Section 66-8-102 be considered a predicate felony offense that must be used in determining if the person is a habitual offender. Since many individuals have felony DWI convictions, they will be habitual offenders (and serve enhanced basic sentences) if convicted of another felony (including another DWI felony) in the future. This will mean longer prison sentences and potentially longer periods of probation supervision. There is no appropriation in the bill to cover any of these increased costs to the Department.

The contract/private prison annual cost of incarcerating an inmate is \$23,867 per year for males. The cost per client to house a female inmate at a privately operated facility is \$21,651 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,467 per year. The cost per client in Intensive Supervision programs is \$3,383 per year. The cost per client in department-operated Community Corrections programs is \$3,503 per year. The cost per client in privately-operated Community Corrections programs is \$7,917 per year. The cost per client per year for male and female residential Community Corrections programs is \$39,401.

SIGNIFICANT ISSUES

Ten years ago, in *State v. Anaya*, 123 N.M. 14 (1997), the New Mexico Supreme Court ruled that a felony conviction for DWI does not count as a prior felony conviction for purposes of sentencing under the Habitual Offender Act. When a person is being sentenced for a felony and the person has one or more prior felony convictions, the present sentence is increased by one year for one prior felony, four years for two prior felonies, and eight years for three or more prior felonies. NMSA 1978, Section 31-18-17. The New Mexico Supreme Court in *Anaya* concluded that the legislature did not intend to include what was then the newly created DWI felony among those felony convictions to which the Habitual Offender Act sentencing applies. The Court found “Where, as here, the legislative intent with regard to the applicability of a criminal sentencing statute is unclear and ambiguous, it is for the legislature to clarify its intent and not the prerogative of this Court.” SB 441 appears intended to address the Court’s invitation to remove ambiguity and lack of clarity by requiring a felony DWI conviction be treated the same as any other felony conviction for purpose of habitual offender sentencing.

PERFORMANCE IMPLICATIONS

The increases in penalties for DWI offenses, including felony convictions for repeat offenders, have resulted in a dramatic rise in the number of DWI cases that go to trial and in the complexity of these cases. Appellate and trial time devoted to DWI cases has required a greater devotion of court resources than before penalties were increased. Courts will have to grapple with challenges to the proposal to apply habitual offender sentencing to felony DWI convictions, a process that will have a performance impact that cannot be stated with certainty.

ADMINISTRATIVE IMPLICATIONS

This bill could have a minimal to substantial negative effect on the state’s ability to provide prison-related and probation/parole supervision services, depending on the number of individuals who are identified as habitual offenders because of this bill.

Depending on just how many DWI felony offenders there are in New Mexico and how many of those offenders receive a second or subsequent felony conviction for DWI or another crime, this bill could result in a minimal to substantial increase in prison population and probation/parole caseloads.

The state might be able to absorb and handle the prison population and probation/parole caseload increases with its current staff and current prison space, but not if the bill causes substantial increases to the prison population or probation/parole caseloads.

DUPLICATION

SB 451 is an exact duplicate.

TECHNICAL ISSUES

For purposes of the courts' ability to interpret legislative intent, it would be useful for the bill to state whether it applies to pending prosecutions on its effective date, July 1, 2007, based on the date of the crime, the date of charging, or the date of sentencing. *See State v. Shay*, 136 N.M. 8, 10 (Ct.App.), *certiorari quashed*, 137 N.M. 266 (2005).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

A felony DWI conviction will continue to be the only felony in New Mexico for which a convicted felon avoids application of habitual offender sentencing.

CS/csd