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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/14
LAST UPDATED 02/11/14 **HB** 175
SPONSOR Perea
SHORT TITLE Increase Penalties for four or more DWIs **SB** _____
ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Narrative	See Narrative	See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)
 Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 175 would amend the statute prohibiting driving while intoxicated (“DWI”) to increase the penalties and mandatory periods of incarceration currently provided for felony DWI convictions, which apply for someone’s fourth—seventh or subsequent convictions. The penalties would be increased as follows:

- from 18 months to 30 months, with an increase from six to 18 months mandatory incarceration, for a fourth DWI conviction;
- from two years to three years, with an increase from one year to two years mandatory incarceration, for a fifth DWI conviction;
- from 30 months to 42 months, with an increase from 18 months to 30 months mandatory incarceration, for a sixth DWI conviction; and,
- from three years to four years, with an increase from two years to three years mandatory incarceration for a seventh DWI conviction.

It would also add a new subsection for an eighth or subsequent DWI conviction, which would be

classified as a second degree felony, with a potential penalty of 12 years incarceration, of which ten years in prison would be mandatory.

FISCAL IMPLICATIONS

If passed into law the potential penalties and mandatory periods of incarceration would be increased from six to twelve months for the current felony DWI crimes, and a new classification for persons convicted of their eighth or subsequent DWI conviction would be created that would require them to be sentenced to at least ten years in prison. Increased penalties could also generate more litigation which would require more resources for prosecutors, defendants' attorneys and the courts.

According to the New Mexico DWI Citation Tracking System, of the 8,191 people convicted of DWI offenses in 2012, 357 people were convicted for the 4th time, 129 people were convicted for the 5th time, 73 people were convicted for the 6th time, 34 people were convicted for the 7th time, and 46 people were convicted for the 8th or subsequent time. Currently, most inmates sentenced to one year or less are housed in county jails and inmates sentenced to more than one year are sent to a state prison.

The AODA provided the following:

By specifying a mandatory 18 month term of incarceration for a fourth DWI conviction instead of the six month mandatory term now provided, it would, presumptively, require all persons convicted of DWI be sentenced to incarceration in the Department of Corrections instead of the county jail pursuant to Section 31-20-2 NMSA 1978. It could also eliminate some persons charged with a fourth DWI conviction, and (at least in Bernalillo county) who are placed on an ankle bracelet before trial or plea, get credit for that form of incarceration and then plead to the charge. Frequently the remainder of their sentence is suspended on condition they successfully complete drug court.

The average cost per inmate per day in FY12 was \$95.49 or \$34.9 thousand per year.

Increasing the mandatory sentence from six months to eighteen months for each fourth DWI conviction may cost the general fund as much as \$12.5 million annually if 2012 trends persist. Since these inmates would now be housed in prison rather than jail the costs of incarceration would shift to the state. Mitigating these costs, some felony DWI cases spend time in pretrial confinement or in community release programs, considered part of their sentence. The remaining time to be served by fourth DWI offenders who receive the mandatory 18 month sentence in some cases may be less than 12 months and will be served in county detention or on a community release program.

Additionally, increasing the mandatory sentence by one year for fifth, sixth, and seventh DWI convictions could cost the general fund as much as \$8.2 million per year. Each eighth conviction of DWI could cost the state approximately \$348.5 thousand if each inmate served the mandatory 10 years in a state prison.

Additionally, it must be remembered that DWI offenders normally earn 30 days per month of good time (assuming they program and do not engage in misconduct), thereby effectively reducing their incarceration periods by half. Also, NMCD releases a large number of offenders each year, and its incarceration costs only increase if the number of admissions exceeds the

number of releases. Both of these factors tend to reduce the fiscal impact of this bill.

SIGNIFICANT ISSUES

The AGO provided the following:

The mandatory prison sentence created by new subsection (K), to be applied to eighth and subsequent DWI convictions and would place mandatory sentences for these offenses higher than those currently in place for a number of other crimes, including: Criminal Sexual Penetration (force or coercion resulting in personal injury to the victim) is currently a nine year sentence; Voluntary Manslaughter is currently a six year sentence; Assault with Intent to Commit a Violent Felony is currently a three year sentence; shooting at a dwelling or occupied building is currently a nine year sentence.

EC/ds