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## FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 03/03/01 HB 457/aHJC/aHAFC  
 SHORT TITLE: Penalties and Treatment for DWI Offenders SB \_\_\_\_\_  
 ANALYST: Trujillo

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			\$ 600.0	Recurring	General Fund
			See Narrative	Recurring	Federal Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
 Administrative Office of the Courts (AOC)  
 Bernalillo County Metropolitan Court (BCMC)  
 Attorney General (AG)  
 Taxation and Revenue Department (TRD)  
 NM Public Defender (NMPD)  
 Children Youth and Families Department (CYFD)  
 Corrections Department (CD)  
 Department of Public Safety (DPS)  
 NM Highway Transportation Department (NMHTD)

### SUMMARY

#### Synopsis of HAFC Amendment

The House Appropriation and Finance Committee amendment strikes the \$2.5 million general fund appropriation for the purpose of providing or contracting for the purpose of providing or contracting for the provisions of substance abuse counseling and treatment for felony DWI offenders. The amendment also deletes the reversion clause.

#### Synopsis of HJC Amendment

House Judiciary Committee amendments to HB457:

1. Deletes the provision that specifies CD as being the sole entity required to provide substance abuse treatment to DWI offenders;
2. In the title deletes “felony” from the text in order to include all DWI offenders;
3. Includes “drug court program approved by the court”;

4. Changes the appropriation from CD to the Department of Finance and Administration; and
5. In Section 3 of the text deletes “felony” from the text in order to include all DWI offenders.

#### Synopsis of Original Bill

House Bill 457 provides that upon a felony conviction for DWI, the CD is mandated to provide substance abuse counseling or treatment, or both, to the offender. The bill appropriates \$2.5 million from the general Fund to CD for expenditure in FY 2002 for the purpose of providing or contracting for the provision of substance abuse counseling and treatment for felony DWI offenders. Any unexpended balance remaining at the end of FY 2002 reverts to the general fund.

HB 457 includes: language to remove prior felony DWI conviction from the definition of a “prior felony conviction” as a “habitual offender”; increases penalties for fourth conviction; adds language to increase fifth, sixth, seventh or subsequent convictions; changes the requirements that all DWI offenders complete a screening program; only first time offenders are required to complete a screening program; additional jail sentencing for convicted second or third DWI offenders is removed if a screening program is not completed; and adds a requirement that second or third convicted DWI offenders complete a thirty-day in-patient or 90-day out-patient treatment program.

#### Significant Issues

NMSHTD reports 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 three out of four federal requirements for mandatory penalties applied to DWI repeat offenders. HB457 will increase the noncompliance with federal regulations as noted above. All states are required to be in compliance with federal requirements by October 1, 2001.

According to NMSHTD , to meet Federal requirement in 23 U.S.C. Section 164 relating to repeat offenders, New Mexico must revise existing law to require: a one-year hard license suspension or revocation; assessment (screening) of an individual’s degree of abuse of alcohol; a mandatory sentence for second offenses of not less than 5 days of imprisonment; and impoundment or immobilization of repeat offenders vehicles during license revocation or installation of an ignition interlock system for a period of time after the end of the license suspension or revocation for second or subsequent DWI offenders.

#### **FISCAL IMPLICATIONS**

HB457 appropriates \$2,500.0 from the general fund to CD for FY 2002 for the purpose of providing or contracting for the provision of substance abuse counseling and treatment for felony DWI offenders. CD reports this amount should probably be sufficient for such purposes.

HB4571 also imposes cost increases upon CD for which there is no appropriation. In later years, the increase in the mandatory portion of the prison sentence required for fifth, sixth and seventh or subsequent DWI offenders will result in a significant increase in costs to CD. This is due to the longer prison terms served by these offenders. On the other hand, this increase in costs is somewhat mitigated due to the fact that the definition of “prior felony conviction” is qualified to exclude a prior DWI conviction from the definition.

HB457 could also result in a minimal decrease in costs to CD if the numbers of probation violations are decreased due to the mandatory in-patient or out-patient substance abuse treatment programs that are required for second or third DWI convictions.

Amount to be transferred is 1.5% of federal highway construction funds (approximately \$3 million dollars) 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.

NMPD reports the penalty increases for subsequent DWI convictions will have significant impact on all DWI litigation, both at the misdemeanor and felony level. NMPD's estimate of costs is based on the need for better tracking, investigation, early intervention strategies, and preparation of enhancement proceedings. NMPD can most effectively meet these goals by hiring additional legal liaisons for each district office statewide, hiring one additional social worker for the heaviest caseload jurisdiction (Albuquerque Metropolitan Court), and one additional attorney for Metropolitan appeals. **The cost of \$600,000 for these new positions is the NMPD's best estimate of the fiscal impact of this bill.**

The AG reports felony DWI convictions are often appealed and are already regularly found in the caseload of the criminal appeals division of this office. The AG might also, from time to time, be called upon to prosecute a felony DWI charge upon district attorney request or disqualification. This proposed change in the law would not necessarily increase the caseload of either division.

### **ADMINISTRATIVE IMPLICATIONS**

CD reports, in the short-term, HB457 will result in an increase in the administrative burden upon Department personnel who will be required to implement additional substance abuse programs for all felony DWI offenders. In the long-term, HB457 will also result in an increase in the administrative burden placed upon prison personnel who will be required to manage a slightly larger prison population.

According to CD, HB457 could result in a minor decrease in the administrative burden upon Department probation and support personnel who may be required to address fewer probationary violations as a result of the required in-patient or out-patient treatment programs.

### **CONFLICT**

HB457 conflicts with SB 305, HB 281, HB 386, SB 251 & SB 344.

### **OTHER SUBSTANTIVE ISSUES**

CD reports CD addictive services professionals believe meaningful addictive services programming should involve at least a six (6) month program.

The AG reports this measure clearly declares the legislative intent concerning repeat felony DWI convictions. When the DWI Reform Act was enacted in 1993, the Legislature created a fourth-degree-felony penalty for a fourth or subsequent conviction of DWI. The *Anaya* case dealt with whether the legislature intended to create a special kind of fourth-degree felony or a "regular" fourth-degree felony that would be subject to habitual-offender sentencing enhancements. The court held that the legislative intent was not clear and applied the "rule of lenity" in deciding that a special kind of felony had been created. The opinion invited the Legislature to cure this ambiguity if it so chose. *Id.* at ¶ 35. This bill, if enacted, would directly address the question of legislative intent considered in *Anaya* by exempting fourth-degree felony DWI from the application of the Habitual Offender Act.

The measure also provides for the following increased punishments for subsequent DWI offenses:

6. A fourth offense remains a fourth-degree felony with a penalty of eighteen months imprisonment.
7. A fifth offense would be a fourth-degree felony and carry a two-year sentence.
8. A sixth offense would be a fourth-degree felony and carry a thirty-month sentence.
9. A seventh and subsequent offense would be a third-degree felony and carry a three-year sentence. Restrictions are placed on the sentencing court's ability to suspend or defer portions of these sentences.

The measure also requires the court to sentence a second or third time offender to participate in and complete a thirty-day in patient treatment program on any second or subsequent offense. This requirement cannot be suspended or deferred.

NMHTD reports, as is, passage of HB457 bill will:

- Subject New Mexico to loss of highway construction funds.
- Mean that a subsequent DWI offender will not be punished as a habitual offender.
- Provide for progressive penalties for fourth, fifth, sixth and seventh or subsequent convictions for DWI. However, a subsequent offender, even if the individual has 21 convictions, will not be subjected to enhanced sentencing as a habitual offender. Consequences for repeated driving while intoxicated will not be equivalent to those for a habitual offender.
- Eliminate the requirement that all DWI offenders complete a screening program. Alcohol screening is a powerful tool for evaluation of addiction, supports effective design of treatment programs and benefits all DWI offenders, not just first time offenders, as required by federal regulations.
- Require second offenders be sentenced to a jail term of not less than seventy-two hours (3 days) instead of 5 days as required by federal regulations.
- Fails to require installation of an ignition interlock system after the end of the license suspension or revocation for second or third DWI offenders, as required by federal regulations. Instead, this may be a condition of probation. The ignition interlock system prevents repeat DWI offenders from operating their vehicles until they demonstrate changed behavior around drinking and driving. To be in compliance with federal requirements regarding repeat DWI offenders, all offenders must be subject to the installation of an ignition interlock system on each of the offender's vehicles for a period of time after the end of the one-year license suspension.

NM will be sanctioned for noncompliance with 23 U.S.C. Section 164 and funds will be transferred from Highway Construction projects to other programs. There will be a continued likelihood of alcohol involved crashes in New Mexico caused by repeat DWI offenders.

NMPD reports it has had experience with raising the levels of punishment in DWI cases. When the Legislature created felony DWI, the impact on NMPD was substantial and sustained. Before the courts could begin to function, the Legislature had to provide additional funding for NMPD, for the courts and the district attorneys. The numbers of DWI cases are predictably large, averaging 3,500 per annum in Albuquerque's Metropolitan Court, plus all the cases statewide handled by this Department directly or on a contract basis.

HB457 would impact three areas of practice: Metropolitan and magistrate court misdemeanor DWIs, felony DWIs statewide, and Metropolitan Court appeals. To handle the increase in litigation and in enhancement proof and proceedings, the most cost-effective solution for the Department is to hire additional attorney and paralegal staff. To increase the effectiveness of early intervention strategies at the misdemeanor level NMPD would hire one additional social worker for the Albuquerque Metropolitan division (currently without any social worker position). To handle the increase in DWI appeals from Metropolitan court, NMPD would hire one additional attorney for the Metropolitan

Appeals section of the NMPD's appellate division. There will also be additional costs for contract counsel with more cases going to trial, higher case fees, and more expert witness fees. These resources would not only keep NMPD from creating a bottleneck in the system, but would actually further legislative goals by increasing the likelihood that some defendants would enter treatment programs and not re-offend.

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