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FISCAL IMPACT REPORT



SPONSOR: Carraro DATE TYPED: 02/07/02 HB _____

SHORT TITLE: DWI Habitual Offenders SB 344

ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
		\$0.1	Indeterminate	Recurring	General Fund

SOURCES OF INFORMATION

Administrative Office of the District Attorneys (ADA)
 Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 Corrections Department (CD)
 Department of Public Safety (DPS)
 Attorney General's Office (DPS)
 State Highway and Transportation Department (SHTD)

SUMMARY

Synopsis of Bill

Senate Bill 344 amends the definition of a habitual offender to include DWI felony convictions as follows:

The mandatory sentence for a second DWI conviction is increased from seventy-two consecutive hours to five consecutive days and for an aggravated DWI the penalty is increased from ninety-six consecutive hours to ten consecutive days.

An offender is required to participate in an alcohol or drug abuse screening program only after the first conviction instead of after every conviction.

The clause regarding ignition interlock devices for subsequent misdemeanor convictions has been deleted.

A thirty day inpatient or sixty day outpatient program for second and subsequent convictions is required.

Significant Issues

The AG states that SB 344 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 invites the legislature to cure this ambiguity if it so chooses.

SB 344 directly addresses the question of legislative intent considered in *Anaya*. The new statutory scheme would subject felony DWI to the following sentencing enhancements found in the Habitual Offender Act.:

- For a fourth offense, the penalty would remain eighteen months imprisonment.
- For a fifth offense, the penalty would be eighteen months imprisonment and the mandatory one-year sentencing enhancement.
- For a sixth offense, the penalty would be eighteen months imprisonment and the mandatory four-year sentencing enhancement.
- For a seventh and subsequent offense, the penalty would be eighteen months imprisonment and the mandatory eight-year sentencing enhancement.

In all events, the sentencing court would have the authority to suspend, defer or take under advisement only one year of the underlying eighteen-month sentence; requiring that six months of the basic sentence must be served.

Each of the sentencing enhancements found in the Habitual Offender Act is mandatory.

The enhancements are not subject to suspension or deferral and may not be taken under advisement. Any sentence imposed would, however, be subject to existing provisions allowing "good time" credits.

It should also be noted that any prior convictions for other offenses would subject the felony DWI offender to these sentencing enhancements as well. For example, if a person had a burglary conviction in 1989, a felony DWI conviction in 1993 and then is convicted of yet another felony DWI offense in 2002, his sentence would be subject to the eight-year enhancement found in the Habitual Offender Act.

FISCAL IMPLICATIONS

This bill mandates treatment for repeat offenders. However, no money is allocated for treatment of the indigent.

Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

CD notes that any bill that has the possibility of increasing the incarcerated population will have a negative fiscal impact on them.

The PDD believes that SB 344 will greatly increase their case load .

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts commensurate with the increase in caseload and in the amount of time necessary to dispose of cases.

CD notes that any bill that has the possibility of increasing the incarcerated population will have a negative administrative impact on them.

CONFLICT

Conflicts with Senate Bill 133, Ignition Interlock Devices are required for first-time offenders and for subsequent offenses. The judge would have discretion to impose this penalty.

DW/ar