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## FISCAL IMPACT REPORT

SPONSOR: Park DATE TYPED: 01/30 HB 40

SHORT TITLE: Increase DWI Penalties SB \_\_\_\_\_

ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant	Recurring	General Fund
			See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 117, HB 139, HB 189, SB 16, SB, SB93 and SB 99

### SOURCES OF INFORMATION

Responses Received From  
 Public Defender Department (PDD)  
 State Highway and Transportation Department (SHTD)  
 Administrative Office of the District Attorneys (AODA)  
 Administrative Office of the Courts (AOC)  
 Corrections Department (CD)  
 Attorney General (AG)

### SUMMARY

#### Synopsis of Bill

House Bill 40 amends Section 66-8-102 NMSA 1978 to increase the criminal penalty for a third DWI conviction “within three years,” raising the offense to a fourth degree felony with a six month mandatory jail term. The bill also gives the district court exclusive jurisdiction in cases where a person is charged with a third DWI offense within three years. No other change in penalties for DWI convictions is proposed.

#### Significant Issues

The bill provides the same criminal penalty and minimum sentencing requirement for a third DWI conviction “within three years” currently provided for fourth and subsequent convictions.

The Administrative Office of the District Attorneys (AODA) reports that because the trial and conviction of any offender may occur months and perhaps years after the commission of an offense, making an increase in penalty dependent upon conviction provides an incentive to offenders to delay the court process in order to escape felony conviction. (SEE TECHNICAL ISSUES)

### **FISCAL IMPLICATIONS**

AODA reports that Magistrate or Metropolitan Courts may see a slight decrease in the number of cases filed for prosecution, while District Courts will likely experience a slight increase in caseload. It will probably be necessary to shift resources within the courts', district attorney's and public defender's offices in order to accommodate a change in the way cases are processed. Because felony cases are inherently more expensive than misdemeanors, the above will all need additional resources to effectively dispose of these cases.

AOC notes that increased penalties for some third DWI offenses have the potential to increase the number of jury trials, therefore requiring increased resources for courts, district attorneys and public defenders.

Corrections Department (CD) notes that under current law, a third DWI offense is a misdemeanor with a maximum jail or prison sentence of one year, of which 60 consecutive days in mandatory and that this bill makes a third DWI conviction within a three year time period a felony offense with a maximum prison sentence of 18 months, of which at least a 6 month jail term is mandatory. CD estimates the bill will result in an annual increase of between 50 and 60 prison commitments and a corresponding yearly increase in probation and parole caseloads.

CD also predicts a small increase in revenue from the larger fines imposed for felonies that are classified as misdemeanors under current law and in additional probation and parole supervision fees.

Attorney General (AG) notes that any felony conviction is subject to a direct appeal to the New Mexico Court of Appeals. The AG will likely experience an increase in caseload due to the increase in DWI cases classified as felonies.

### **ADMINISTRATIVE IMPLICATIONS**

AODA reports that because cases filed in district court require some pleadings not normally required in magistrate court, there will be an increase in paperwork for all relevant agencies.

CD reports that the administrative burden on prison, probation and parole personnel, and support staff will increase significantly due to increases in caseload.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to HB 117, HB 139, HB 189, SB 16, SB, SB93 and SB 99. No conflicting language.

### **TECHNICAL ISSUES**

AG reports an apparent conflict in the language of the bill. Section F(2) states that a third con-

viction shall result in the imposition of a jail term of not less than thirty consecutive days; however, in Section G, a third conviction “within three years” is classified as a fourth degree felony and a jail term of not less than six months shall be imposed. The language is ambiguous as to what triggers the beginning of the three year period. AG notes that cases dealing with the sequence of offenses and convictions include State v. Hernandez, 2001-NMCA-057, 130 N.M. 698, 30 P.3d 387; State v. Linam, 93 N.M. 307, 600 P.2d 253 (1979), and Koonsman v. State, 116 N.M. 112, 860 P.2d 754 (1993).

AODA notes that using criminal conviction dates to determine the three year period (and therefore whether or not the case is a felony) acts as a disincentive to speedy resolution of DWI cases (SEE SIGNIFICANT ISSUES). AODA recommends using offense dates in place of conviction dates in order to mark the beginning and ending of the three year period, a practice which would focus on offender behavior rather than on the mechanics of case resolution in court.

### **OTHER SUBSTANTIVE ISSUES**

AODA notes that a significant number of cases will continue to lack adequate and timely proof of prior convictions, meaning that they will not qualify as felony cases under this legislation, despite all indications from other non-qualifying records indicating a high number of prior convictions.

### **POSSIBLE QUESTIONS**

On page 5, line 16, what does “within three years” mean?

**JCF/njw**