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FISCAL IMPACT REPORT

SPONSOR: Tripp DATE TYPED: 02/13/02 HB 327

SHORT TITLE: Increase Jail Time for 2nd and 3rd DWI's 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

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
		Significant	Recurring	Federal

(Parenthesis () Indicate Revenue Decreases)

Relates to HB 40, HB 117, HB 139, HB 189, HB 250, HB 335, HB 405, SB 93, SB 99, SB 242, SB 248, SB 261, SB 262, SB 266, and SB 341; Conflicts with HB 249 and SB 245 (different jail time for second offenders), and SB 16 (regarding penalties for second offenders).

SOURCES OF INFORMATION

Responses Received From

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

SUMMARY

Synopsis of Bill

House Bill 327 amends Section 66-8-102, increasing the penalties for second and third DWI offenses. The penalties increase as follows:

<u>Offense</u>	<u>Current Mandatory Minimum Sentence</u>	<u>New Mandatory Minimum Sentence</u>
2 nd	Three consecutive days	Fourteen consecutive days
2 nd --Aggravated	Four consecutive days	Thirty consecutive days
3 rd	Thirty consecutive days	Ninety consecutive days
3 rd --Aggravated	Sixty consecutive days	One hundred twenty consecutive days

FISCAL IMPLICATIONS

The Public Defender Department (PDD) notes that the cases of many second or third offenders are handled in municipal courts where, as a result of the significant increase in penalties provided by the bill, most offenders will be counseled to go to trial rather than enter into a plea agreement. PDD indicates that the department will need a significant increase in resources to supplement the extremely limited services currently provided by the municipalities in providing counsel for 2nd and 3rd offenders.

Additionally, PDD notes that the current practice of encouraging offenders in municipal court to enter guilty pleas at arraignment without consultation with an attorney might result in later problems when the state seeks to use those pleas in subsequent cases. PDD indicates that the department would need a significant increase in resources in order to provide counsel for many of these cases.

Increases in court time would likely require additional resources of the judiciary and the district attorneys, at a significant cost to the state.

Corrections Department (CD) reports that currently, most 2nd and 3rd DWI offenders serve their sentences in county or city jails, as those sentences rarely exceed 364 days. CD notes that because many DWI offenders also have multiple misdemeanor offenses, this bill increases the likelihood that 2nd and 3rd DWI offenders will serve sentences that exceed one year. As a result, the inmate prison population will likely increase, shifting costs from city and county jails to state prisons.

The State Highway and Transportation Department (SHTD) reports that the department's Federal Highway construction fund was sanctioned \$3,000.0 in FY00, \$3,000.0 in FY01, and \$6,000.0 million in FY02. SHTD reports that the fund will continue to be sanctioned \$6,000.0 annually in future fiscal years as long as the state does not meet the federal government's criteria. SHTD sets forth the necessary conditions and the state's level of compliance as follows:

- *Certain mandatory minimum sentences.* SHTD reports that law must provide for a mandatory minimum sentence of not less than five days of imprisonment or 30 days of com-

munity service for a second offense and not less than ten days of imprisonment or 60 days of community service for a third or subsequent offense. **SHTD reports that the state does not currently meet this condition but would meet it with passage of this bill.**

- *A minimum one-year license revocation for all repeat DWI offenders.* SHTD reports that the state **does not meet** this condition.
- *Impoundment or Immobilization of, or the Installation of an Ignition Interlock System, on motor vehicles.* SHTD reports that the state **does not meet** this condition.
- *An assessment of their degree of alcohol abuse, and treatment as appropriate.* SHTD reports that the state currently **does meet** this condition.

TECHNICAL ISSUES

The Attorney General (AG) notes that in State v. Calvert et.al, Ct.App. Nos. 22,731, 22, 734 and 22,699 (filed December 13, 2002), the NM Court of Appeals recently determined that, despite use of the term “consecutive” as used in Section 66-8-102, the Legislature did not intend to prevent application of pre-sentence confinement credit against the mandatory minimum consecutive sentences for second and third DWI convictions.

AG indicates that the result under current case law interpreting Section 66-8-102 as it relates to second and third-time DWI offenders, is that mandatory minimum sentences will not necessarily be served without interruption. For example, the proposed mandatory minimum of fourteen consecutive days as provided by this bill for a second DWI offense could be served piecemeal if the accused served four days in pre-sentence confinement and was given credit for that time at sentencing. In such a case, the convicted second DWI offender would be required to only serve ten consecutive days upon sentencing.

AG suggests that if the result reached by the State v. Calvert court is not intended by this bill, the bill be amended to include language clarifying that the term “consecutive” as used in Section 66-8-102(F) requires an uninterrupted and continuous period of confinement as the mandatory minimum sentence for second and third DWI offenders.

OTHER SUBSTANTIVE ISSUES

PDD notes that an increase in trials, as a result of this bill, could overload magistrate and metropolitan courts to the extent that some cases may not be adjudicated within six months of filing and will therefore result in no punishment and no record of conviction.

JCF/njw