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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 03/12/03 HB 335/aHJC

SHORT TITLE: Increase DWI Probationary Period 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)

Conflicts with HB 117 (DWI Penalties for Certain Offenders)

SOURCES OF INFORMATION

Responses Received From

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

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment strikes the amendments to Section 66-8-102, removing the provision of the original bill that increased the potential period of probation ordered by a state court for a first DWI offense from one to two years.

Significant Issues

Under the amended bill, a convicted DWI offender could face a longer term of probation if sentenced in a municipal court than if the same offender were sentenced as a first-time offender in a

state court.

Synopsis of Original Bill

House Bill 335 amends Section 35-15-14, providing municipalities with the authority to suspend in whole or in part the execution of a sentence for DWI, to place a DWI offender on probation for a period not exceeding **two years** on terms and conditions the court deems best, or both.

The bill also amends Section 66-8-102, increasing the potential period of probation for a first DWI offense from one to **two years**.

Significant Issues

The Public Defender Department (PDD) notes that the bill conflicts with the provisions of NMSA 1978, Section 31-19-1 and the case law interpreting that statute. PDD notes that Section 31-19-1 provides that when the court defers or suspends a sentence, it shall order the defendant to be placed on probation for all or some of the period of deferment or suspension. PDD references State v. Candelaria, 113 N.M. 288, 825 P.2d 221 (Ct. App. 1991), in which the court held the court could not impose a longer probation period than the length of the suspended or deferred sentence and State v. Vigil, 103 N.M. 581, 711 P.2d 26 (Ct. App. 1985), in which the court held that under Sections 31-19-1 and 31-20-6D, (now amended) the court could only impose a probationary period of one year.

PDD notes that NMSA 1978, Section 31-20-5A provides that the total period of probation ordered by the magistrate or metropolitan courts that have jurisdiction over misdemeanor DWI shall not be longer than the maximum allowable incarceration time for the offense. Because DWI is a misdemeanor, unless it is a fourth or higher, the maximum penalty is one year. (SEE ALSO TECHNICAL ISSUES)

AODA notes that the proposed legislation does not amend that portion of subsection F of section 66-8-102 which provides that the period of probation for a second or third conviction of DWI may extend beyond one year but shall not exceed five years. (SEE ALSO TECHNICAL ISSUES)

The State Highway and Transportation Department (SHTD) notes that the bill may increase the length of installation of interlock devices as a condition of probation in some cases.

FISCAL IMPLICATIONS

Corrections Department (CD) notes the bill will likely result in increased costs for probation officers assigned to the supervision of first-time DWI offenders. CD reports that the annual per client cost in Probation and Parole is \$1,533 in standard supervision programs and \$2,964 in intensive supervision programs.

The workload in magistrate, metropolitan and municipal courts will likely increase in cases where the period of probation exceeds one year. Courts, district attorneys, PDD and the AG may see increases in costs as a result of increased litigation in the face of potential conflicts between this bill and existing law.

AODA notes that there will likely be costs associated with agencies monitoring and carrying out the conditions of probation, as additional employee time will be required to monitor defendants for longer periods. AODA indicates that costs will likely be offset to some extent by those defendants who are required to pay a monthly fee for probation monitoring compliance programs under section 31-20-5.1 NMSA 1978.

The state bears the cost of ignition interlock devices for indigent offenders, meaning that any cost increases associated with lengthening the period of installation on the vehicles of indigent offenders shall be paid by the state.

TECHNICAL ISSUES

PDD recommends that although 31-20-5 contains the savings clause, “or as otherwise provided by law,” the bill include the language “notwithstanding the provisions of section 31-20-5A.” (SEE ALSO SIGNIFICANT ISSUES)

AODA suggests subsection F of section 66-8-102 be amended, providing that the period of probation for a second or third conviction of DWI may extend beyond two years but shall not exceed five years. (SEE ALSO SIGNIFICANT ISSUES)

JCF/yr