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## FISCAL IMPACT REPORT

SPONSOR: Carraro DATE TYPED: 2/5/03 HB \_\_\_\_\_

SHORT TITLE: Felony DWI Conviction SB 16

ANALYST: Maloy

### APPROPRIATION

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

### SOURCES OF INFORMATION

Responses Received From

Department of Public Safety  
 Corrections Department  
 Bernalillo County Metro Court  
 Administrative Offices of the Courts  
 N.M. Public Defenders Department  
 Administrative Offices of the District Attorney  
 Highway and Transportation Department  
 Health Policy Commission

### SUMMARY

Synopsis

- Senate Bill 16 proposes to amend the habitual offender statute to add a DWI felony conviction as a prior felony conviction for the purposes of habitual offender proceedings.
- The mandatory sentence for a second DWI conviction is increased from 72 consecutive hours to 5 consecutive days in jail. For an aggravated DWI, the sentence is increased from 96 consecutive hours to 10 consecutive days in jail.
- SB 16 also requires that a second, or subsequent, DWI conviction shall result in the offender being required to participate in and complete, within a time frame specified by the court, a minimum 30-day inpatient treatment program, or a minimum 60-day outpatient treatment program.

Significant Issues

- In State v. Anaya, 1997-NMSC-010, the Supreme Court considered the question of whether a person who has prior felony convictions and is subsequently convicted of felony DWI should be subject to sentence enhancement as a habitual offender. The Court held that because the DWI statute itself involves an enhancement from a misdemeanor penalty to a felony penalty, a second enhancement as a habitual offender is *improper in the absence of clear evidence that the legislature intended to authorize that result*. This bill clarifies the legislature's intent in this regard.
- SB 16 creates a significant increase in penalties. As a result, more first, second and third offenders will be advised to proceed to trial rather than to enter into a plea agreement. There will be more trials, which will affect the District Attorneys Office, the Public Defenders Office and the Courts. Also, where convictions are achieved, the Corrections Department will be affected with longer terms of incarceration.
- The Public Defenders Office presently seeks to find treatment programs for DWI offenders and has encountered extreme difficulty finding treatment programs with openings, particularly inpatient programs.

**FISCAL IMPLICATIONS**

- SB 16 contains no appropriation. However, it is expected to affect agencies such as the District Attorneys Office, the Public Defenders Office, the Courts, and the Corrections Department with an increase in cases and longer incarcerations.

**RELATIONSHIP TO AND/OR CONFLICT WITH**

A number of different bills relating to DWI sentencing are presently under consideration. At this time, it appears the following bills are either closely related to, or at least in partial conflict with, SB 16. Among these are:

- HB 40, which makes a 3<sup>rd</sup> DWI within 3 years a 4<sup>th</sup> degree felony.
- HB 117, which mandates inpatient treatment of at least 30 days upon 2<sup>nd</sup> and 3<sup>rd</sup> convictions; requires that all jails provide substance abuse treatment for offenders during their incarceration; establishes increasingly greater punishments, including increased mandatory jail time for 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> convictions; and, elevates a 7<sup>th</sup> DWI offense to a 3<sup>rd</sup> degree felony. HB 117 specifically excludes felony DWIs from the Habitual Offender Act.
- SB 92, which increases penalties for 5<sup>th</sup> and subsequent convictions.
- SB 93, which makes a 5<sup>th</sup> DWI conviction a 3<sup>rd</sup> degree felony with a one year minimum jail sentence and 3 year basic sentence, and a 6<sup>th</sup> or subsequent conviction becomes a 2<sup>nd</sup> degree felony with a minimum 3 year jail sentence and a 9 year basic sentence. SB 93 does not attempt to make any changes in the Habitual Offender Act.

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- HB 139, which provides for the seizure, forfeiture and disposal of offenders' vehicles.
- HB 189, which requires alcohol screening within 30 days of any DWI conviction, to be performed by a screening program approved by the Department of Finance and Administration, followed by completion of any necessary court-ordered treatment.

### **OTHER SUBSTANTIVE ISSUES**

- DWI is the second largest category of offenses resulting in jail time in New Mexico.
- Almost 1/4<sup>th</sup> of all jail detainees in New Mexico have DWI offenses.
- There were 13,737 total DWI convictions and 5,659 repeat convictions in New Mexico in 2001.
- New Mexico has consistently ranked at the top of national surveys for alcohol-related motor vehicle fatalities (per capita). New Mexico's alcohol-involved fatality rate in 2001 was 10.9%, compared to the national average of 6.1%.

**SJM/prr**