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FISCAL IMPACT REPORT

ORIGINAL DATE 01/21/10

SPONSOR Wirth LAST UPDATED _____ HB _____

SHORT TITLE Increase DWI Penalties & Fines SB 5

ANALYST Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$1,000*	\$1,000*	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

* SEE NARRATIVE

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$1,600*	\$1,600*	\$3,200*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

* ESTIMATED SEE NARRATIVE

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Administrative Office of the Courts (AOC)

Public Defender (PD)

New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

Senate Bill 5 amends the penalties and fines for driving under the influence of intoxicating liquor or drugs and aggravated driving under the influence of intoxicating liquor or drugs under Section 66-8-102 NMSA 1978.

The bill amends Subsection E of the statute regarding first convictions to add a fine of \$1,000 in addition to the existing statutory penalty of imprisonment for not more than 90 days. The bill also adds a provision that an offender shall be sentenced to a mandatory jail term of 72 consecutive hours or, for aggravated driving while under the influence of intoxicating liquor or drugs, a jail term of 120 consecutive hours. The bill deletes sections of Subsection E subsumed by new provisions of the bill.

Under Subsection G, the bill adds a fine of \$2,000 for a second conviction in addition to the existing statutory penalty of imprisonment for not more than 364 days; a mandatory jail sentence of 7 consecutive days or, for aggravated driving while under the influence of intoxicating liquor or drugs, a jail term of 15 consecutive days; and mandated participation in and timely completion of not less than a 28 day inpatient, residential or in-custody substance abuse treatment program approved by the court, not less than a 90 day outpatient treatment program approved by the court, a drug court program approved by the court or any other substance abuse treatment program approved by the court.

Under revised Subsection H, if an offender with a first or second conviction fails to complete in a timely manner any community service, screening program, treatment program or, as added by the bill, DWI school ordered by the court, the offender shall be sentenced to a mandatory jail term of not less than an additional 48 consecutive hours for a first conviction and not less than an additional seven consecutive days in jail for a second conviction.

Under revised Subsection I, upon a third conviction, an offender is guilty of a fourth degree felony, rather than the current misdemeanor, and shall be punished by a fine of \$5,000 in addition to the existing statutory penalty of imprisonment.

Under revised Subsection J, upon a fourth conviction of a fourth degree felony, an offender shall be punished by a \$5,000 fine in addition to the existing statutory penalty of imprisonment.

Under revised Subsection K, upon a fifth conviction, an offender is guilty of a third degree felony and shall be punished by a \$5,000 fine in addition to the existing statutory penalty of imprisonment.

Under revised Subsection L, upon a sixth or subsequent conviction, an offender is guilty of a third degree felony and shall be punished by a \$5,000 fine in addition to the existing statutory penalty of imprisonment.

FISCAL IMPLICATIONS

The increase of fines and fees may generate additional revenues for the general fund. However, the bill will have a significant fiscal impact on the state. The increase in minimum mandatory sentences for felony DWI offenders may increase the sentence lengths for DWI offenders incarcerated in state prisons. The Judiciary, District Attorneys and Public Defender Department may also see increases in their respective workloads. Increased mandatory minimum penalties for all DWI offenses and the conversion of a third conviction from a misdemeanor to a felony may result in more trial requests.

SIGNIFICANT ISSUES

This bill will change the way third DWI cases are currently handled in the courts.

According to the AOC, SB 5 imposes increased fines and a mandatory jail term of 72 hours or, for aggravated driving, a mandatory jail term of 120 hours upon a first conviction. Jury trials are likely to increase because of the mandatory three days in jail penalty for a first DWI and the increased fines and penalties for all DWI convictions. Additional trials would strain the judiciary's resources.

Currently, a DWI third offense charge is a misdemeanor case heard by Magistrate Court judges. In FY09 there were 943 cases filed in Magistrate Courts with a DWI third offense charge. Under the weighted caseload study, the average time spent by Magistrate Court judges on each DWI case is 100 minutes. According to the AOC, under SB5 a DWI third offense charge is raised to a felony which would be heard by a District Court judge. As a result, the Magistrate Courts will no longer conduct jury trials or trials for those cases. Instead, Magistrate Court judges will conduct preliminary hearings for those cases.

According to the AOC, District Court judges who hear cases filed with a DWI third offense charge will have an additional workload of 107 case weight minutes for each case. District Courts are already struggling with insufficient resources to process existing caseloads. The increase in District Court DWI cases can only aggravate the strain on court resources.

Moving DWI thirds to district court will increase what the state pays for jurors in those cases. Jury trials in magistrate court consist of six jurors with a couple of alternates where jury trials in district court consist of twelve persons with a few alternates. Jurors are paid minimum wage for each hour of service. The jury and witness fund in FY 10 will be short \$600,000.

According to the Public Defender, a significant cost to this bill is treatment. By numbers released in the January LFC letter, it appears that incarceration for alcohol **treatment** in the state penitentiary system is significantly higher than regular per day cost of incarceration. This is a cost that the Public Defender is in favor of, but as with increased trials, there is a cost to the judiciary.

According to the New Mexico Health Policy Commission (NMHPC), SB 5 attempts to create more stringent DWI laws that impose longer imprisonment terms with limited time that is permitted to be suspended, deferred or taken under advisement, and higher fines. The bill also determines that a third and fourth DWI conviction is a fourth degree felony and a fifth or a subsequent DWI conviction is a third degree felony. NMHPC believes this bill will assist New Mexico in the continued effort of reducing the number of DWI fatalities and crashes.

PERFORMANCE IMPLICATIONS

According to the Public Defender, the first major assumption under fiscal impact is that many first-time DUI offenders will have bonded out during their first 24 hours in jail, leaving them with a balance of at least two additional days in jail on a plea agreement. The department can not document this assumption through jail records on a 24-hour turnaround for analyses.

The second major assumption is that certain people who would otherwise have chosen to plea (because there was no jail, or an assurance of no additional jail with a plea) would now choose to take cases to trial rather than plea. This can not be proven, but since the entire purpose of a section in the bill assumes the impact of additional jail as deterrence, there must be an equivalent presumption that additional jail will impact defendants' plea decisions.

According to the AOC, under the current system very few first DUIs actually go to trial, volumes of DUI 1sts are high, and a small percentage change in the number of clients choosing not to plea (say just 5%) will result in a significant number of new trials.

Fiscal implications of making a third DWI a felony could only be accurately reported by determining what the actual drop-off is between those persons committing a third DWI and those committing a fourth. While the drop-off from a first to a second conviction (many are one and done) is significant, it appears that with multiple offenses, deterrence decreases.

ADMINISTRATIVE IMPLICATIONS

The Public Defender expects their caseload to increase with the passage of this bill. The department, despite a very difficult economic environment, has not requested to increase its fees to clients from the current \$10.00 per case. The reason for this, according to them, is that the department believes in rehabilitation and trying to level the playing field. Indigent persons are already at a disadvantage. Indigent persons with addiction issues are doubly burdened and stressed. They believe that saddling these persons with higher fines at just the time when they expect them to put energy into significant personal and sometimes physical change must be considered the most regressive of taxes. In addition, since most of our clients will be unable to pay they will inevitably trade out their liberty, paying these fines by additional time spent in county jails.

RELATIONSHIP

SB5 relates to:

- HB34 (Liquor Surtax to School Fund), which imposes a new Alcohol Surtax on the retail sale of alcoholic beverages to consumers.
- HB46 (DWI Chemical Test Fees), which increases the court imposed fee from \$65.00 to \$85.00 in order to cover the costs of chemical and other tests that are associated with determining the impairment levels from alcohol and/or other drugs.
- SB3 (DWI Incarceration Requirements), which requires an offender to complete his/her incarceration terms without an option of replacing incarceration time with electronic monitoring or community supervision.
- SB4 (DWI Plea Agreements & Refused Chemical Tests), which mandates a plea of guilty for any violation of Section 66-8-102 when an individual refuses to submit to a chemical test.

- SB32 (DWI Chemical Test Fee Increase), which increases the court imposed fee from \$65.00 to \$85.00 in order to cover the costs of chemical and other tests that are associated with determining the impairment levels from alcohol and/or other drugs.

TECHNICAL ISSUES

Page 5, line 24, insert the word “in” before “which the requirement shall not be suspended, deferred or taken”...

OTHER SUBSTANTIVE ISSUES

Currently 25 other states have mandatory jail time for first time offenders.

Currently New Mexico does not have any mandatory jail sentence for first time offenders, although first time offenders are responsible for 65-70% of New Mexico’s alcohol involved fatalities.

According to the PD, while it may ultimately benefit clients to have to make hard choices at their first DWI accusation, and also benefit the state, if the costs [of anticipated additional trials, additional treatment, additional incarceration] are treated as an after issue, the system will develop in new and unexpected ways to compensate for its inability to handle the additional pressure. More cases will ‘slip through the cracks’; more clients will be ‘processed’ rather than represented, which will mean less counseling and less advice and intervention at the point of impact and potential change.

The National Highway Transportation Safety Administration (NHTSA) issued the statement below as part of a 2005 report.

Based on these findings, it has been suggested that a weekend in jail may be useful for first-time offenders, for whom a “taste of punishment” may be an effective deterrent (Jones et al., 1988; Mayhew and Simpson, 1991). However, since many convicted impaired drivers, particularly repeat offenders, have severe life-stress problems, may be alcohol-dependent, and may have additional health problems, long jail terms are unlikely to resolve their problems and may even exacerbate them (Homel, 1981). For such individuals, incarceration, which effectively incapacitates them as a threat to public safety, but only for the period they are incarcerated, may be most effective as a complement to treatment-oriented measures (Jones and Lacey, 1991).

NHTSA - A Guide to Sentencing DWI Offenders 2005 HS 810 555

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

CS/mt