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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/05/11

SPONSOR Lewis LAST UPDATED 03/14/11 HB 330/a HCPAC

SHORT TITLE Penalty Increase for DWI Offenders SB \_\_\_\_\_

ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$30.0	\$60.0	\$90.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 3, SB 127, SB 197, SB 306, SB 307, SB 308, SB 387, SB 405, SB 509, HB 49, HB 183, HB 263, HB 325, HB 329, HB 357 & HB 392

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Attorney General's Office (AGO)  
 Corrections Department (CD)  
 Department of Transportation (DOT)  
 Public Defender Department (PDD)  
 Sentencing Commission (SC)  
 Taxation & Revenue Department (TRD)

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 330 provides that with each subsequent conviction after the seventh conviction one year of imprisonment shall be added to the sentence provided for in this bill and to the portion of the sentence that is not to be suspended, deferred or taken under advisement.

#### Synopsis of Original Bill

House Bill 330 amends Section 66-8-102 NMSA 1978 to increase the penalties for fourth and higher convictions of DWI, as follows:

- For a fourth conviction, the term of imprisonment is increased from eighteen to thirty months, eighteen months of which shall not be suspended deferred or taken under advisement;
- For a fifth conviction, the term of imprisonment is increased from two to three years, two years of which shall not be suspended deferred or taken under advisement;
- For a sixth conviction, the term of imprisonment is increased from thirty to forty-two months, thirty months of which shall not be suspended deferred or taken under advisement;
- For a seventh or subsequent conviction, the term of imprisonment is increased from three to four years, three years of which shall not be suspended deferred or taken under advisement.

## FISCAL IMPLICATIONS

As penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, court room availability and jury fees. These additional costs are difficult to quantify, but given the number of fourth and above DWI convictions, such costs could well be significant statewide:

### FY10 DWI convictions

Fourth	=	422
Fifth	=	60
Sixth	=	37
Seventh and above	=	30

CD provided the following:

Since many CD offenders have felony DWI convictions, this bill is going to result in significantly longer prison sentences for these offenders. However, there is no appropriation in the bill to cover any of these increased incarceration costs to the CD, and it seems likely that these increased sentences for a significant number of these DWI offenders will eventually result in substantial increases to the prison population. CD currently has 68 inmates in its custody serving prison time on only a DWI felony conviction. CD currently has 277 inmates in its prison custody serving prison time for a DWI felony conviction and other convictions. In other words, a significant percentage of CD's prison population consists of DWI Offenders.

CD estimates that this bill will result in additional incarceration costs of \$90,000 during the relevant three year period. This is only an estimate, and could be high or low. The longer sentences resulting from this bill will cause the increase in costs and in prison population to only be compounded in the future, as more DWI offenders enter prison with longer sentences.

The classification of an inmate determines his or her custody level, and the incarceration

cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$49,347 per year in a state owned/ operated prison to \$31,239 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$33,258 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,521 per year. The cost per client in Intensive Supervision programs is \$3,445 per year. The cost per client in Community Corrections is \$3,475 per year. The cost per client per year for female residential Community Corrections programs is \$41,653 and for males is \$24,803.

### **SIGNIFICANT ISSUES**

The SC notes that the proposed basic sentences for felony DWI offenses set forth in HB 330 are not in alignment with the basic sentences for felony offenses set forth in Section 31-18-15 NMSA 1978.

According to a Pew Center study, the national prison population declined, but the New Mexico prison population increased about 2.8 percent, between December 2008 and January 2010.

Although the exact numbers are unknown, it is certain that this bill will increase the burden on the already underfunded and overcrowded CD. The bill will also similarly affect the county detentions centers, most of which are also underfunded and overcrowded. The Bernalillo County Metropolitan Detention Center is so overcrowded that it has once again announced that it must release some non-violent offenders before their sentences have been served.

If even a small number of significant criminal penalty expansion bills such as this one are passed, CD will quickly reach its rated capacity for its prison population. At that point, the State will have three options: house inmates out of state, consider early release of inmates in accordance with the Corrections Population Control Act or other applicable state laws, or build more prisons or add space to existing prisons. All of these options have negative consequences. Early release of inmates jeopardizes public safety, housing inmates out of state or building new prisons.

The DOT Traffic Safety Bureau is the lead New Mexico agency responsible for behavioral programs aimed at reducing alcohol impaired driving and improving behavioral aspects of highway and traffic safety. Punishment and deterrence of DWI by severe penalties is an important component of the State's efforts to prevent drunk driving and is a best practice "alcohol countermeasure". According to a 2000 report by the National Transportation Safety Board, the actual possibility of a long jail term may provide sufficient incentive to offenders to motivate their active participation in other programs that may be effective in reducing recidivism.

The PDD offered the following:

New Mexico prisons and jails are already so underfunded and overcrowded that they are unable to provide adequate treatment required by Section 66-8-102, subsections K,L, and

M to all of the inmates who require treatment. The proposed increased periods of incarceration for persons convicted of DWI would only increase the burden on the CD on local governments and ultimately on the taxpayers, without providing any corresponding rehabilitative benefit.

The proposed amendment would result in longer periods of incarceration for defendants who may have no other criminal history other than DWI convictions. More non-violent DWI offenders could be placed at risk if housed together with violent offenders for long periods of time. With the proposed longer sentences, it could become increasingly more difficult for DWI offenders to reintegrate successfully into society.

It is doubtful that increasing the period of incarceration will solve the problem of drunk driving by repeat offenders, most of whom have severe addiction or other mental health problems that require extensive medical treatment, currently not adequately addressed by the programs in the jails and prisons. A more effective and less expensive alternative to HB 330 would be to increase funding of community custody programs, drug courts, and other forms of intensive supervision.

## **RELATIONSHIP**

HB 330 relates to the following DWI bills:

- SB 3, Blood Tests for Intoxication and Drugs
- SB 127, Prohibit Certain DWI Plea Agreements
- SB 197, Use of Electronic Sobriety Monitoring Devices
- SB 306, Home Breathalyzer for Certain DWI Offenders
- SB 307, Seizure of Vehicle for Certain DWI Offenders
- SB 308, Interlock Regulations for DWI Offenders
- SB 387, Chemical Tests with Probable Cause of DWI
- SB 405, DWI and Drug Standards Clarification
- SB 509, No Car Interlock for Certain Convictions
- HB 49, DWI as Drugs in Blood & Interlock for Alcohol
- HB 183, DWI First Offender Follow-Up Program
- HB 263, Vehicle Seizure W/DWI Arrest in Certain Cases
- HB 325, Make DWI Death a Serious Violent Felony
- HB 329, Consistent Felony DWI Convictions
- HB 357, Homicide by Boat & Great Bodily Harm by Boat
- HB 392, DWI Alcohol Concentration Levels

DW/bym