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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/2016
LAST UPDATED 2/4/16 **HB** 81/aHJC

SPONSOR Pacheco

SHORT TITLE Increase Certain DWI Penalties **SB** _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate Increase	Indeterminate Increase	Indeterminate Increase	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 44, HB 74, HB 82, HB 83, SB 45, SB 118

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 Department of Public Safety (DPS)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of HJC Amendment

House Judiciary Committee Amendment to House Bill 81 changes the language in the section which adds the charge of “party to a crime”. The bill inserts “knowingly” to describe the person who authorizes or permits the use of a vehicle if the person to whom permission or authorization is given has a revoked driver’s license for driving under the influence of intoxicating liquor or drugs and the person is arrested for DWI.

Synopsis of Bill

House Bill 81 proposes to proposes to add a new section to the Motor Vehicle Code adding a fourth degree felony for driving under the influence of intoxicating liquor or drugs if the person’s driving privileges are revoked or suspended or violates the Implied Consent Act or if the person

is subsequently convicted. The bill also proposes to add the charge of “party to a crime” if a person authorizes or knowingly permits a person’s whose driving privileges are revoked to drive a motor vehicle either owned or under the permitting person’s control.

FISCAL IMPLICATIONS

Depending on the increase in cases filed, the cost to the PDD, district attorney and courts will also increase. However, it is not possible to quantify the amount with any certainty. Although it is difficult to accurately estimate the cost of increased trials because of this or similar legislation, it is important to note that the average salaries, benefits and other costs yearly for the district courts, district attorneys and public defenders are as follow:

- PDD: \$152.1
- District Attorneys: \$195.4
- District Courts: \$335.6

The proposed law would require two separate trials for individuals charged under the new provision of Section 66-5-39.2, NMSA 1978; one for driving with a suspended or revoked license and another for the DWI charge. Establishing this offense as a fourth degree felony is so severe that many accused persons will invoke their right to trial and their right to trial by jury for both trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. These additional costs are not capable of quantification.

Enhanced sentences over time will increase the population of New Mexico’s prisons and long-term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state prison (public and private combined) is an average of \$123 per day, or about \$45,250 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD’s general fund budget, not including supplemental appropriations, has grown \$5 million, or 7 percent, since FY11 as a result of growing prison population.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

SIGNIFICANT ISSUES

AOC The new charge and penalty proposed under Section 66-5-39.2, NMSA 1978, would take the place of any penalties provided under the DWI and revoked license statutes, for eligible offenders. Therefore, any penalties imposed under those separate statutes would have to be vacated and replaced by the penalty under Section 66-5-39.2, where applicable. Alternatively, the courts would have to withhold sentencing for a revoked or suspended license conviction, as well as the separate DWI conviction, if they have notice that the state would intend to pursue the penalty under Section 66-5-39.2. Otherwise, imposition of penalties under the suspended or

revoked license statute and DWI statute, in addition to the penalties under Section 66-5-39.2, would violate the prohibition against double jeopardy, as Section 66-5-39.2 punishes the same conduct as those separate statutes. See *Swafford v. State*, 1991-NMSC-043, 112 N.M. 3, 810 P. 2d 1223. Withholding sentencing or vacating previously imposed sentences and imposing a new sentence, would create the need for more hearings and additional administrative work for the courts.

PERFORMANCE IMPLICATIONS

This bill may have an impact on the following performance measures:

- District Courts: Cases disposed of as a percent of cases filed and Percent change in case filings by case type;
- District Attorneys: Average caseload per attorney and Number of cases prosecuted; Number of cases prosecuted per attorney;
- Public Defenders: Percent of cases taken by contract attorneys and Percent of cases that go to trial with clients defended by contract attorneys.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 44 – DWI For Certain Drugs & Interlocks; HB 74 – DWI Tests, Penalties & License Revocation; HB 82 – Habitual Offender DWI Sentencing; HB 83 – Increase Certain DWI Penalties; SB 45 – Create Crime of DWI with Minor in Car; and SB 118 – Increase DWI Penalties

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