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FISCAL IMPACT REPORT

SPONSOR Maestas-Barnes/
Montoya **ORIGINAL DATE** 1/26/16 **LAST UPDATED** 2/15/16 **HB** 83/aHJC

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			Significant Increase See Fiscal Implications	Significant Increase See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 44, HB 74, HB 81, HB 82, SB 45
Duplicates 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)
Administrative Hearing Office (AHO)
New Mexico Corrections Department (NMCD)
Department of Public Safety (DPS)
New Mexico Sentencing Commission (NMSC)
Department of Transportation (DOT)

SUMMARY

Synopsis of HJC Amendment

House Judiciary Committee amendment to House Bill 83 removes all the proposed changes in the original bill increasing imprisonment for fourth, fifth, sixth and seventh DWI convictions. The substitute retains the addition of an eighth DWI conviction proposed in the original bill and the emergency clause.

Synopsis of Bill

House Bill 83 seeks to amend statutes 66-8-101 and 66-8-102 to increase penalties.

NMSA 1978, Section 66-8-101 (Homicide by vehicle; great bodily harm by vehicle) is amended to make homicide or great bodily harm by motor vehicle while under the influence of intoxicating liquor or while under the influence of any drug or while driving recklessly is guilty of a **second degree felony** as opposed to a third degree felony required by the current statute.

HB83 also proposes to amend the following subsections of Section 66-8-102 NMSA 1978 increasing the terms of imprisonment for driving under the influence.

- A fourth conviction changing the imprisonment term from 18 to 30 months, 2 years which shall not be suspended, deferred or taken under advisement;
- A fifth conviction changing the imprisonment term from two years to 3 years, 18 months which shall not be suspended, deferred or taken under advisement;
- A sixth conviction changing the imprisonment term from 30 months to 42 months, 30 months which shall not be suspended, deferred or taken under advisement;
- A seventh conviction changing the imprisonment term from 3 years to 4 years, 3 years which shall not be suspended, deferred or taken under advisement;
- A eight or subsequent conviction adding imprisonment term of 12 years, 10 years which shall not be suspended, deferred or taken under advisement.

The effective date of the bill is July 1, 2016.

FISCAL IMPLICATIONS

Although the NMCD's budget may not be negatively impacted in FY16 or FY17, it will be impacted as early as FY18 and ten year thereafter if this bill becomes law. One individual convicted of an eighth DWI will cost the state general fund including earned meritorious deductions more than \$452 thousand in incarceration costs over the incarceration period. Increased length of stay will increase the cost to house an offender in prison. The average cost to incarcerate one inmate over the last three years has increased 6.5 percent. Based on this trend, the cost to house one inmate will increase to \$51.2 thousand and \$54.1 thousand in FY17 and FY18, respectively.

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.

According to NMCD, ultimately it seems likely that this bill, in conjunction with other bills increasing the criminal penalties of various crimes, will result in the Department reaching its full capacity at some point in the near future. At that point, the Department will have to build,

purchase or lease additional bed space, and such space is expensive. Using probation or diversion programs to avoid sending non-predatory, nonviolent offenders in order to make room for the predatory DWI offenders in prison is going to be needed to reduce or alleviate the Department's fast approaching lack of bed space. NMCD predicts it will reach 98 percent of its prison capacity by the summer of 2016.

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.

Depending on the increase in the number of cases filed, the cost to the PDD, district attorneys and district 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

NMCD states in its response that the lengthened sentences offer greater evidence-based drug and alcohol treatment. As such, the bill may result in a reduction in less direct expenses and in the impact of crimes upon victims (loss of productivity, physical and mental health treatment expenses, and quality of life). There may be reduced costs associated with victim support and advocacy services.

SIGNIFICANT ISSUES

The PDD notes that the sentences do not correspond with particular felony sentences under Section 31-18-15. For example, Section G punishes a fourth conviction as a fourth-degree felony, but the sentence under this Act is 30 months whereas for any other crime the sentence is 18 months. Similarly, for a fifth conviction the level of felony is a fourth-degree, but the sentence is three years. Also, for a sixth conviction, the level of felony is a third-degree, which is punished as 3 years under Section 31-18-15, yet under this Act is 42 months. Further, the new category for an eighth and subsequent conviction sets the level of felony at a second-degree, but again does not track the sentence in Section 31-15-18 (A)(6) (9 years for a second degree felony). This seems inherently confusing.

According to the AODA, HB83 would add a new subsection for punishment of anyone convicted of DWI for the eighth, or subsequent, time. Those convictions would be designated as a second degree felony. The sentence prescribed for anyone convicted of an eighth or subsequent DWI offense would be a term of imprisonment of twelve years, with a minimum mandatory term of incarceration of ten years. By comparison, as drafted, neither vehicular homicide nor great bodily injury by vehicle would have a mandatory minimum sentence; instead both could have their sentences deferred or suspended.

PERFORMANCE IMPLICATIONS

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

- NMCD:
 - Percent of prisoners reincarcerated back into the corrections department within thirty-six months due to technical parole violations;
 - Percent of prisoners reincarcerated back into the corrections department system within thirty-six months due to new charges or pending charges;0
 - Percent of inmates testing positive for drug use or refusing to be tested in a random monthly drug test; and
 - Percent of sex offenders reincarcerated back into the corrections department within thirty-six months
- District Courts:
 - Cases disposed of as a percent of cases filed;
 - Percent change in case filings by case type;
- District Attorneys:
 - Average caseload per attorney;
 - Number of cases prosecuted; Number of cases prosecuted per attorney;
- Public Defenders:
 - Percent of cases taken by contract attorneys;
 - Percent of cases that go to trial with clients defended by contract attorneys.
- NMDOT:
 - Number of traffic fatalities;
 - Number of alcohol-related traffic fatalities;
 - Number of non-alcohol-related traffic fatalities; and
 - Number of crashes in established safety corridors.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 44 – DWI For Certain Drugs & Interlocks; HB 74 – DWI Tests, Penalties & License Revocation; HB 81 – Increase Certain DWI Penalties; HB 82 – Habitual Offender DWI Sentencing; SB 45 – Create Crime of DWI with Minor in Car

Duplicates SB 118/aSJC – Increase DWI Penalties

ABS/jle/jo