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## FISCAL IMPACT REPORT

SPONSOR: Sharer DATE TYPED: 02/06/03 HB \_\_\_\_\_

SHORT TITLE: DWI Increased Penalties SB 93

ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant	Recurring	GF/OSF

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 40, HB 139, HB 189, SB 16, SB 99

### SOURCES OF INFORMATION

Responses Received From

- Administrative Office of the Courts (AOC)
- Association of District Attorneys (AODA)
- State Highway and Transportation Department (SHTD)
- Attorney General (AG)
- Department of Health (DOH)
- Corrections Department (CD)

### SUMMARY

Synopsis of Bill

Senate Bill 93 increases penalties for fifth or subsequent DWI convictions and makes a fifth conviction a third degree felony punishable by a term of imprisonment of three years, one year of which cannot be suspended or deferred. The bill also makes a sixth or subsequent conviction a second degree felony, punishable by a term of imprisonment of nine years, three years of which shall not be suspended or deferred.

### FISCAL IMPLICATIONS

Corrections Department (CD) indicates that the mandatory prison terms contained in the bill, one year for a 5<sup>th</sup> DWI conviction and three years for a 6<sup>th</sup> or subsequent DWI conviction, will spur

significant cost increases for the department. CD reports that cost increases due to longer prison terms will begin to appear approximately one year after the effective date, then beginning to level off after approximately three years. The department estimates an annual increase of approximately 30 to 40 longer prison sentences for 5<sup>th</sup> DWI convictions and an annual increase of approximately 20 to 30 longer sentences for 6<sup>th</sup> or subsequent DWI convictions.

The department indicates that increasing the penalties from a 4<sup>th</sup> degree felony to a 3<sup>rd</sup> degree felony and 2<sup>nd</sup> degree felony will also result in an increase in the period of probation and parole and a corresponding increase in probation and parole costs.

The amendments proposed in this bill will yield a significant increase in the number of felony DWI convictions, therefore necessitating an increase in the number of felony prosecutors, defense attorneys and court staff. Cost increases will be further exacerbated because felony cases are inherently more expensive than misdemeanors. Public Defender Department (PDD) reports that clients facing harsher jail terms are less likely to plead at either the magistrate or district level.

PDD indicates that this bill will significantly increase the department's needs for in-house and contract counsel and that in-house felony counsel cost more than entry-level misdemeanor attorneys who staff the lower courts. The department estimates that this bill would increase the need for felony attorneys in each of the eight outlying districts, Albuquerque and in districts served by contract counsel.

Department of Health (DOH) indicates that this bill would likely result in increased costs to DOH, the Department of Finance and Administration (DFA), and municipal governments. Substance abuse treatment costs may increase if there is increased demand for in-prison treatment services. DOH estimates that of the annual 4,000 multiple offenders only 1,500 would be served by DOH's Behavioral Health Services Division (the remaining 2,500 would be served via DFA and county/municipality funding). DOH reports that an increase of just 500 clients served for 30 days in residential treatment would cost \$1.5 million, and 1,000 clients served for 60 days in outpatient treatment would cost an additional \$2 million.

The cost and availability of substance abuse programming is one of the most important elements to consider in reforming DWI legislation. Regardless of whether legislation specifically mandates treatment, populations under CD supervision will grow, as will offenders potentially eligible for treatment. Increased demand for services inside and outside of CD facilities poses a significant cost for the state.

## **CONFLICT, RELATIONSHIP**

HB 40-Amends the same Section of law, conflicting language (jail time); HB 117-Amends the same Section of law, conflicting language (jail time); HB 139-Amends the same Section of law, no conflicts; HB 189-Amends same Section of law, no conflicts; SB 16-Amends the same Section of law, conflicting language (jail time); and SB 99-Amends the same Section of law, no conflict language.

**JCF/njw**