

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/09

SPONSOR Cravens LAST UPDATED _____ HB _____

SHORT TITLE DWI for Habitual Offender Sentencing SB 536

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate See Below	Indeterminate See Below		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Corrections Department (CD)
 Department of Public Safety (DPS)
 Public Defender Department (PDD)
 Sentencing Commission (SC)

SUMMARY

Synopsis of Bill

Senate Bill 536 amends the Habitual Offender Sentencing Act, Section 31-18-17 NMSA 1978 to include a prior felony DWI conviction as a prior felony conviction for sentencing enhancement purposes.

One prior gets a habitual offender one extra year, two priors four years and three priors eight years.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase

CD provided the following:

Since many individuals have felony DWI convictions, they will now be habitual offenders and serve enhanced basic sentences if convicted of another felony including another DWI felony in the future. This will generally result in longer prison sentences for DWI felony offenders.

However, there is no appropriation in the bill to cover any of these increased costs to the CD.

The contract or private prison annual cost of incarcerating an inmate is \$27,761 per year for males. The cost per client to house a female inmate at a privately operated facility is \$31,600 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract or private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,205 per year. The cost per client in Intensive Supervision programs is \$3,848 per year. The cost per client in Community Corrections is \$3,830 per year. The cost per client per year for male and female residential Community Corrections programs is \$25,161.

Depending on just how many DWI felony offenders there are in New Mexico and how many of those offenders receive a second or subsequent felony conviction for DWI or another crime, this bill is likely to result in a minimal and eventually in a substantial increase in the CD prison population and some increase to the CDs probation and parole caseloads. By law, habitual offender enhancements of four and eight years cannot be suspended or deferred, meaning that this time must actually be served in prison.

SIGNIFICANT ISSUES

The Supreme Court has ruled a conviction for felony DWI is not included in the habitual offender enhancement statute. Specifically, the Court has stated it is up to the legislature, if it so chooses, to clarify its intention, making convictions and sentences applicable to sentencing as a habitual felony offender. As presently written, the legislative intent in these highly punitive statutes is ambiguous. The courts are not a legislative body but an interpretive one. Where, as here, the legislative intent with regard to the applicability of a criminal sentencing statute is unclear and ambiguous, it is for the legislature to clarify its intent and not the prerogative of this Court. Thus, SB 536 is the legislative action needed to include felony DWI convictions in this sentencing scheme, as contemplated by the Supreme Court.

AOC notes increases in penalties for DWI offenses, including felony convictions for repeat offenders, have resulted in a dramatic rise in the number of DWI cases that go to trial and in the complexity of these cases. Appellate and trial time devoted to DWI cases has required a greater devotion of court resources than before penalties were increased. Courts will have to grapple with challenges to the proposal to apply habitual offender sentencing to felony DWI convictions, a process that will have an impact that cannot be stated with certainty.

The SC provided the following:

Under the current Habitual Offender Act, persons convicted of one or more prior felonies are subject to the possibility of sentencing enhancements for subsequent felony convictions. Upon conviction for a second felony, the basic sentence shall be increased by one year. Upon conviction for a third felony, the basic sentence shall be increased by four years. Upon a conviction for a fourth or subsequent felony, the basic sentence shall be increased by eight years.

The current Habitual Offender Act expressly excludes felony DWI convictions from the definition of prior felony convictions. SB 536 amends the Habitual Offender Act to require that a felony DWI conviction be included in the definition of a prior felony conviction.

In 2003, a bill was enacted into law that expressly excluded felony DWI convictions from the definition of prior felony conviction in the Habitual Offender Act. In that same bill, current law was amended to provide sentencing enhancements for felony DWI convictions. The sentencing enhancements began with a fourth DWI conviction, and were “stepped-up” for a fifth DWI conviction, a sixth DWI conviction and seventh and subsequent DWI convictions.

SB 536 proposes to expressly include felony DWI convictions as prior felony convictions under the Habitual Offender Act, but does not remove the sentencing enhancements established in Section 66-8-102 NMSA 1978. If SB 536 is enacted as currently drafted, there might be a legal challenge asserting multiple sentencing enhancements for a felony DWI conviction

ADMINISTRATIVE IMPLICATIONS

The affected agencies may not be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities.

TECHNICAL ISSUES

The AOC states that for purposes of the courts’ ability to interpret legislative intent, it would be useful for the bill to state whether it applies to pending prosecutions on its effective date, July 1, 2009, based on the date of the crime, the date of charging, or the date of sentencing.

DW/mt