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FISCAL IMPACT REPORT 11

ORIGINAL DATE 03/03/11
 SPONSOR Lewis LAST UPDATED 03/13/11 HB 329
 SHORT TITLE Consistent Felony DWI Convictions SB _____
 ANALYST Wilson and Hughes

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		At least \$600.0	At least \$600.0	At least \$1,200.0	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 330, 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)
- Sentencing Commission (SC)

SUMMARY

Synopsis of Bill

House Bill 329 amends the habitual offender statute (Section 31-18-17 NMSA1978) to include a prior felony DWI conviction as a prior felony conviction for sentencing enhancement purposes.

FISCAL IMPLICATIONS

The increases in penalties for DWI offenses, including felony convictions for repeat offenders, have resulted in both an increased number of DWI cases that go to trial and an increase in case complexity. The AOC is currently working on possible parameters to measure resulting case increase. In addition, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

Allowing a prior felony DWI conviction to be considered a “prior felony conviction” for the purpose of the habitual offender statute might increase the number of cases that are eligible for enhancement. It also increases the mandatory sentence by one, four or eight years, thus increasing the amount of time an offender may be imprisoned. Increasing the length of a sentence causes a ripple effect throughout the criminal justice system, increasing costs through every step in the system.

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 and in longer prison sentences for those offenders with felony DWI convictions who have been convicted of other felonies. However, there is no appropriation in the bill to cover any of these increased costs to the CD and it seems likely that the number of new habitual offenders created by this bill will eventually cause substantial increases to the CD’s 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.

If you assume that just ten offenders with one or more previous felony convictions will enter prison on a DWI felony conviction during FY 11, and also assuming that those offenders would under current law only serve approximately one year in prison due to receiving presentence confinement credit for their fourth degree DWI felony convictions, then each of these ten offenders would remain in prison for the next two years and beyond due to their habitual offender status. This would cost CD approximately \$600,000 in additional incarceration costs in FY 12 and 13 that it would not have under current law assuming these offenders are housed in a private prison at approximately \$30,000 per year instead of being incarcerated in a more expensive public prison). This increase in costs and in prison population will only compound in the future, as multiple DWI offenders and other repeat offenders with a DWI conviction enter prison with significant enhancements tacked onto each of their 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 or operated prison to \$31,239 per year in a contract or private prison where primarily only level III or medium custody inmates are housed. The cost to house a female inmate at a privately owned or 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 or 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

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.

Currently, the Habitual Offender Act expressly excludes felony DWI convictions from the definition of prior felony convictions. HB 329 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, Section 66-8-102 NMSA 1978 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.

HB 329 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 HB 329 is enacted as currently drafted, there may be a legal challenge asserting multiple sentencing enhancements for a felony DWI conviction

ADMINISTRATIVE IMPLICATIONS

There may need to be increased personnel and increased space to house offenders.

RELATIONSHIP

HB 329 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 330, Penalty Increase for DWI Offenders
- HB 357, Homicide by Boat & Great Bodily Harm by Boat
- HB 392, DWI Alcohol Concentration Levels

TECHNICAL ISSUES

The AOC states that in order to assist the courts in interpreting legislative intent, a statement clarifying whether the bill applies to pending prosecutions on its effective date, July 1, 2011, the date of the crime, the date of charging, or the date of sentencing, would be helpful.

ALTERNATIVES

AODA suggests that a better fix to the Habitual Offender Statute might be as follows: “whether within the Criminal Code or the Controlled Substances Act or a felony conviction pursuant to Section 66-8-102 NMSA 1978”. This way, it cannot be argued that the Habitual Offender Statute no longer applies to criminal code convictions or controlled substances convictions.

DW:TH/bym:svb