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FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/15

SPONSOR Montoya LAST UPDATED _____ HB 355

SHORT TITLE Increase DWI Penalties SB _____

ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See narrative					

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 30, HB 32, HB 86, HB 120, HB 131; and HB 359
 Relates to SB 499

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Public Defender Department (PDD)
- New Mexico Corrections Department (NMCD)
- New Mexico Municipal League (NMML)
- Department of Transportation (NMDOT)
- Taxation and Revenue Department (TRD)
- New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

House Bill 355 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.

NMSA 1978, Section 66-8-102 would do away with the concept of aggravated DWI and significantly increase the penalties for first and subsequent DWI convictions. A first offense would require sentencing to **thirty days** in a treatment facility, or a detention facility. Failure to comply with court orders would require an additional **7 days jail time** rather than 48 consecutive hours. A second conviction would result in a sentence of **ninety days jail time**. A third conviction would result in a **fourth degree felony** with 364 days to be served mandatorily. A fourth conviction would result in a **third degree felony** with two years to be served mandatorily.

A fifth conviction would result in a **second degree felony** with 5 years to be served mandatorily. A sixth or subsequent conviction would result in a **second degree felony** with a nine year sentence plus an additional year for each previous conviction pursuant to this section and seven years to be served mandatorily.

In addition, the periods a person must submit to ignition interlock devices is increased for second, third and fourth convictions to 5 years, 10 years and life respectively.

FISCAL IMPLICATIONS

The PDD states that this bill could lead to significantly increased costs of incarceration as it significantly increases the minimum penalties for all DUI convictions. It could also increase the number of trials (as people are more likely to fight charges when there is a higher mandatory minimum), increasing costs for the public defender department. While it is likely that the PDD would be able to absorb some cases under the proposed law, any increase in the number of prosecutions brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

According to the NMML, HB 355 bill will significantly increase the cost associated with handling DWI cases because it would establish mandatory jail penalties upon conviction. First offenders would be required to serve 30 days in a treatment facility, and second offense would be required to serve a mandatory 90 days. These enhanced sentences and increased mandatory jail times might drive DWI cases out of municipal courts and into the state court system.

Although the NMCD's budget may not be negatively impacted in FY15 or FY16, it will be impacted as early as FY17 and beyond. One person convicted will cost the department approximately \$40.2 thousand. The cost to NMCD and the general fund of one person being convicted of a 3rd, 4th, 5th and 6th DWI over seven years is \$603.1 thousand.

SIGNIFICANT ISSUES

TRD reports that HB 355 increases the time a person would need to have an ignition interlock license, but does not increase the time period a person's license is revoked under Section 66-5-29 NMSA 1978. The Motor Vehicle Division (MVD) is only able to issue an interlock license when a person's driving privileges are revoked. The bill also has a conflict in the time period a person is required to have an interlock license when receiving a third or fourth conviction. A third conviction is a lifetime revocation, however, only a person with four or more convictions can petition to have the interlock restriction removed. As worded, the bill allows a person with four or more DWI convictions to have the interlock restriction removed and a person with three convictions is required to have the interlock license and device for the rest of the person's life. The bill removes the aggravated driving under the influence charge for refusing to submit to a chemical test.

According to the AOC, the bill could face some double jeopardy challenges for the addition of years for prior convictions to a sentence of a sixth or subsequent conviction.

PERFORMANCE IMPLICATIONS

This bill may impact the following NMCD performance measures:

- 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;
- 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

HB 355 may impact the follow NMDOT performance measures:

- 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.

ADMINISTRATIVE IMPLICATIONS

According to AOC, the bill limits the concurrent magistrate court jurisdiction to first or second offenses. If the bill becomes law, there will likely be a case shift from magistrate courts to the district courts. Judicial resources would likely need to be shifted.

CONFLICT

Conflicts with HB 30 (Alcohol Sales to Interlock Licensees) and HB 32 (Restrict Drivers' License Issuance), which mandate periods of incarceration for fourth and subsequent offenses; HB 359 (Increase Penalties for 4th and Subsequent DWIs); HB 86 (DWI Interlock Removal Requirements); HB 120 (DWI for Certain Drugs and Interlocks); and HB 131(DWI Tests and Interlock Time Requirements)

Relates to SB 499 (DWI with Minors in Vehicle)

TECHNICAL ISSUES

According to the PDD and NMDOT, the bill seems to contradict itself. At 66-8-102(L)(3) it says a person must have an interlock for “a period of ten years, for a third conviction pursuant to this section” and then says “or (4) the remainder of the offender’s life, for a third or subsequent conviction pursuant to this section.” This makes it unclear to the reviewer if a 3rd conviction is intended to be a 10 year interlock or a lifetime interlock.

OTHER SUBSTANTIVE ISSUES

One of NMDOT’s safety goals is to reduce motor vehicle related DWI crashes, injuries and deaths. It opines that increasing penalties for repeat DWI offenders would likely have a positive impact on NMDOT’s safety goal.