

<b>LFC Requester:</b>	Chenier, Eric
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**AGENCY BILL ANALYSIS  
2014 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**LFC@NMLEGIS.GOV**

*And*

**DFA@STATE.NM.US**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X   **Amendment**            
**Correction**           **Substitute**          

**Date** January 30, 2014  
**Bill No:** HB175-305 Jan 30

**Sponsor:** Rep. Vicki Perea                      **Reviewing**    Attorney General's Office  
**Short**        DWI; Increasing Penalties; 2<sup>nd</sup>        **Person Writing**    Kevin A. Graham, AAG  
**Title:**        Deg. Felony for 8<sup>th</sup> DWI                      **Phone:** 505-222-9012    **Email** kgraham@nmag.gov

**SECTION II: FISCAL IMPACT \*\*\*\*FOR LFC OFFICIAL PURPOSES\*\*\*\***  
**AGO STAFF SHOULD LEAVE SHADED AREAS BLANK**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

**BILL SUMMARY**

Summary Synopsis:

This Bill increases the mandatory sentences for several levels of repeat convictions for the crime of Driving Under the Influence of Intoxicating Liquor or Drugs (DWI), NMSA 1978, Section 66-8-102, and creates a new mandatory sentencing provision for eighth and subsequent DWI convictions.

The Bill amends subsection (G) of Section 66-8-102 by increasing the mandatory penalty for a fourth DWI conviction from the current level of eighteen months imprisonment to a new level of thirty months imprisonment. The Bill further amends subsection (G) by specifying that eighteen months of the new thirty month sentence may not be suspended, deferred or taken under advisement (up from the current six months that cannot be suspended, deferred or taken under advisement.)

The Bill amends subsection (H) of Section 66-8-102 by increasing the mandatory penalty for a fifth DWI conviction from the current level of two years imprisonment to a new level of three years imprisonment. The Bill further amends subsection (H) by specifying that two years of the new three year sentence may not be suspended, deferred or taken under advisement (up from the current one year that cannot be suspended, deferred or taken under advisement.)

The Bill amends subsection (I) of Section 66-8-102 by increasing the mandatory penalty for a sixth DWI conviction from the current level of thirty months imprisonment to a new level of forty-two months imprisonment. The Bill further amends subsection (I) by specifying that thirty months of the new forty-two month sentence may not be suspended, deferred or taken under advisement (up from the current eighteen months that cannot be suspended, deferred or taken under advisement.)

The Bill amends subsection (J) of Section 66-8-102 by increasing the mandatory penalty for a seventh DWI conviction (3<sup>rd</sup> degree felony) from the current level of three years imprisonment, to a mandatory four years of imprisonment. The Bill further amends subsection (J) by specifying that three years of the new four year sentence may not be suspended, deferred or taken under advisement (up from the current two years that cannot be suspended, deferred or taken under advisement.)

The Bill adds a new subsection (K) to Section 66-8-102 which creates a new penalty level for

eighth or subsequent convictions for DWI. This new subsection would establish an eighth or subsequent conviction for DWI as a 2<sup>nd</sup> degree felony offense with a mandatory sentence of twelve years imprisonment, with a requirement that ten years of the mandatory sentence could not be suspended, deferred or taken under advisement.

## **FISCAL IMPLICATIONS WITH ENACTING THIS BILL**

The increased penalties required by this Bill would almost certainly result in population increases at State prison facilities due to the convicted offenders serving longer periods of time in prison. This would result in increased expenses for the Department of Corrections.

Longer mandatory sentences for offenders would likely result in an increased number of offenders being unwilling to accept plea offers from State prosecutors, which could result in increased costs of operation for the district attorneys as well increased costs for the district courts due to an increased number of bench and jury trials.

## **SIGNIFICANT LEGAL ISSUES**

The mandatory prison sentence created by new subsection (K), to be applied to eighth and subsequent DWI convictions would put the mandatory sentences for these offenses higher than those currently in place for a number of other crimes, including (but not limited to): Criminal Sexual Penetration (force or coercion resulting in personal injury to victim) [currently a nine year sentence]; Voluntary Manslaughter [currently a six year sentence]; Assault with Intent to Commit a Violent Felony [current sentence three years]; Shooting at Dwelling or Occupied Building [current sentence nine years.]

## **PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL**

## **ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION**

## **TECHNICAL ISSUES OR DRAFTING ERROR**

## **OTHER SUBSTANTIVE LEGAL ISSUES**

## **ALTERNATIVES TO ENACTING THIS BILL**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS NEEDED TO IMPROVE THIS BILL**