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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/4/09  
 LAST UPDATED 2/11/09      HB 484

SPONSOR King

SHORT TITLE No Jury Trial for Certain Offenses      SB \_\_\_\_\_

ANALYST Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate			

(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)

### SUMMARY

#### Synopsis of Bill

The bill eliminates the statutory right given by Section 35-8-1 NMSA 1978 to trial by jury for penalty assessment misdemeanors or offenses that do not prescribe incarceration as a penalty.

## FISCAL IMPLICATIONS

The exact cost of these trials is unknown, because AOC is unable to match payments to jurors with particular trials with its current computer system. AOC estimates that the annual jury-related cost to pay for these trials is between \$50,000 and \$100,000. This includes hourly payments and mileage not only for those chosen to sit on juries but for those summoned in the jury pool as well.

## SIGNIFICANT ISSUES

According to the AOC, this bill does not endanger the Federal or State constitutional right to trial by jury. See Blanton v. City of North Las Vegas, 489 U.S.538, 542-3 (1989) (holding that first-time DUI offender, subject to 90 days of incarceration, \$1000.00 fine, 48 hours' community service, a 90-day license suspension, and possibility of increased penalties for later offenses was not entitled to jury trial under the Sixth Amendment); State v. Sanchez, 109 NM 428, 432, 786 P.2d 42, 46 (1990) (explaining that the right to a jury trial under the Federal or State Constitutions is not implicated unless defendant faces a possible sentence of incarceration of more than six months).

There is a statutory right to trial by jury in the cases identified in this bill only in magistrate court. Compare Section 35-8-1 with Section 34-8A-5(B) (1) (providing that in metropolitan court, "if the penalty does not exceed ninety days' imprisonment or if the penalty is a fine or forfeiture of a license, the action shall be tried by the judge without a jury"). The statutes governing municipal court do not bestow a right to trial by jury in municipal court. See Sections 35-14-1 and 35-15-1 et. seq. NMSA 1978; 1964 Op. Att'y Gen. No. 64-37 (finding no right to trial by jury in municipal court "petty" or "minor" cases arising from the violation of city ordinances); compare Rule 8-501, NMRA 2009 (omitting right to trial by jury from list of rights about which defendants in municipal courts must be informed). See also Section 35-15-10 ("All trials upon appeals by a defendant from the municipal court to the district court for violations of municipal ordinances shall be de novo and shall be tried before the court without a jury.").

According to the AOC, the United States Supreme Court commented that mandating a bench trial for petty offenses served important public policy. "As for a prison term of six months or less, we recognized [in a prior case] that it will seldom be viewed by the defendant as 'trivial or 'petty.'" But we found that the disadvantages of such a sentence, 'onerous though they may be, may be outweighed by the benefits that result from speedy and inexpensive nonjury adjudications.'" Blanton, 489 U.S. at 542-543 (citations omitted). Here, while some persons not subject to incarceration might prefer a jury trial, the advantages to the taxpayer of mandating "speedy and inexpensive nonjury adjudications," id., outweigh those preferences.

According to the AOC, this bill should be considered in the context of the severe pressures on the jury and witness fee fund. The AOC is currently seeking funds to repay the Board of Finance loan obtained in FY08 for the Jury & Witness Fund in the amount of \$353,000. This bill would provide a measure of alleviation for the pressures on the jury and witness fee fund, helping preserve the right to trial by jury where it is an important constitutional right.

The bill promotes the conservation of financial resources and the personnel resources of the magistrate courts while providing for more similar treatment of similar cases in the different courts of the State.

**ADMINISTRATIVE IMPLICATIONS**

According to the AODA, it is possible that this legislation would produce an increased number of appeals to the district courts, which would require the district courts to expend additional time and resources on these cases; however, this seems unlikely and any increase in appeals would likely be more than offset by the reduction in workload on the magistrate courts.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 271, carried by Senator Sue Wilson Beffort, reduces juror compensation from the highest rates paid by any state to equal the next-highest rates, those paid by New York and the District of Columbia.

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

Status Quo

CS/mt