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## FISCAL IMPACT REPORT

SPONSOR: Cravens DATE TYPED: 02/14/03 HB \_\_\_\_\_

SHORT TITLE: Multiple DWI Offender Registry Act SB 259

ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Department of Public Safety (DPS)
- Administrative Office of the District Attorneys (AODA)
- Attorney General (AG)
- Corrections Department (CD)
- State Highway and Transportation Department (SHTD)
- Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 259 provides for a Multiple DWI Offender Registry to aid law enforcement. The bill requires every “multiple DWI offender” to register with the county sheriff. The county sheriff shall maintain a local registry of multiple DWI offenders and shall forward registration information to the Department of Public Safety (DPS). DPS shall maintain a central registry, retaining registration information regarding a multiple DWI offender for the entirety of the offender’s natural life. DPS may develop its DWI offender database in conjunction with the Administrative Office of the Courts’ (AOC) database.

“Multiple DWI offender” is defined as a person who has two or more convictions for driving while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-102 NMSA 1978; provided that only one conviction for driving while under the influence of intoxicating liquor or drugs between July 1, 1992 and July 1, 2002.

A court shall provide a multiple DWI offender with written notice of his duty to register and report subsequent changes of address. The court shall also provide written notification regarding a multiple DWI offender’s conviction to the sheriff of the county in which the offender resides and to DPS.

A multiple DWI offender who willfully provides false information or fails to comply with the registration requirements is guilty of a fourth degree felony.

### Significant Issues

The Attorney General (AG) notes there is potential for courts to construe the provisions of the bill as punitive and not regulatory in nature. Laws requiring registration, namely sexual offender registration, have been subject to constitutional challenges. State and federal constitutional challenge could be made that the multiple DWI offender registry and registration requirements are punitive and provide an additional punishment following a DWI conviction.

The definition of multiple DWI offender is such that, for purposes of the registry, only one conviction for DWI from the ten year period prior to July 1, 2002 is counted.

The Administrative Office of the District Attorneys (AODA) notes that the bill may present double jeopardy concerns because a second DWI conviction is also the basis for conviction under this bill. This invites the argument that a fourth degree felony pursuant to this bill constitutes multiple punishment for the same act. AODA indicates this argument differs from those against vehicle forfeitures, which deprive an offender of the instrumentality of the crime of DWI and help defray costs of enforcing DWI laws.

AODA notes that unlike sex-offender registration, which is an aid to law enforcement in investigating sex offenses, this bill deals with a crime that must be committed in the officer’s presence. This bill would not be of specific aid to officers in the investigation of DWI offense, and officers will not be able to stop individuals simply by virtue of the fact that they are registered as repeat offenders. AODA indicates that such activity would in fact invite arguments that stops of registered offenders are pretextual.

### **FISCAL IMPLICATIONS**

AOC notes that that redesigning and maintaining the DWI hardcore offenders report will pose a significant fiscal impact to AOC/JID. Additionally, creation of new forms, dissemination of notifications and conditions, initiation of additional cases, training, and data entry support will require additional funding and resources in the courts and AOC/JID.

The bill, in creating two new fourth degree felony offenses, will likely have significant fiscal implications for the judiciary, district attorneys, public defenders and county jails. Charges that an offender failed to register are also likely to spur a significant increase in probation violations.

Corrections Department (CD) notes that as a result of the two additional crimes created by the bill, each of which is a fourth degree felony carrying a maximum prison sentence of 18 months, the department estimates several additional prison commitments each year and a corresponding yearly increase in probation-parole caseloads. This phenomenon will have fiscal implications for the department.

DPS indicates that the creation of a central DWI registry will require significant resources. The department notes that failure to fund the project will likely create a significant administrative burden, also pulling resources from other areas of the department.

## **TECHNICAL ISSUES**

AG notes that Taxation and Revenue Department (TRD), Motor Vehicle Division (MVD), maintains information and records regarding DWI offenders, and recommends the bill include TRD as part of the registry. Law enforcement will continue to rely on MVD searches, as those who fail to register will not be listed in the database.

AODA reports that prosecution of relevant cases would still require hard-copy, certified proofs of prior convictions as is required now to prove a DWI subsequent offense. AODA indicates that obtaining those proofs presently begins with an MVD records search and then a request for certified copies from the court where the offender was convicted. The database created by this bill is a near duplication of driver histories compiled by MVD.

AG further notes that the ten day registration requirement included in the bill may be too strict and suggests extending the period to thirty days to avoid unnecessary litigation.

AG notes that Section 5(B)(6) requires disclosure of information for all vehicles the offender owns, drives or has access to. AG suggest this disclosure provision may be interpreted as overly broad and an invasion of privacy. AG suggests proof of insurance be required as well.

Section G of the bill refers to “willfully” failing to register. AODA indicates this may cause some difficulty in proving a case in court as courts generally look for general and specific intent in felony cases. AODA notes that intentional violation will be difficult to prove, especially given that an offender must register annually for a period of ten years following his most recent DWI conviction.

AOC recommends the following amendment (page 7, line 1):

“The administrative office of the courts shall cooperate with the department of public safety by making all DWI Conviction databases and information available....”

## **RELATIONSHIP**

Relates to SB 170 (Relating to Motor Vehicles; creating an affirmative duty for drivers to report DWI convictions. This bill requires a person licensed to drive in the State of NM to report a conviction to MVD.)