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## FISCAL IMPACT REPORT

SPONSOR Carraro DATE TYPED 1/28/04 HB \_\_\_\_\_

SHORT TITLE Felony DWI Conviction as Prior Conviction SB 99

ANALYST Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative		

Relates to HB 94 and SB 144

### SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Office of the District Attorneys (ADA)
- Corrections Department (CD)
- Public Defender Department (PDD)
- Department of Transportation (DOT)

### SUMMARY

Synopsis of Bill

Senate Bill 99 adds the felony offenses of driving while intoxicated to the definition of “prior felony conviction” for purposes of the habitual offender sentencing act, NMSA 1978, section 31-18-17. It makes it an offense for a person driving a commercial vehicle to have breath or blood alcohol content of .04. It increases the penalty for a second DWI conviction to five consecutive days, and if aggravated DWI, ten consecutive days. Second DWI offenders must participate in a 30 day inpatient or 60 day outpatient treatment program.

Significant Issues

The PDD states the New Mexico Supreme Court decided in State v. Begay, 2001-NMSC-02, 130 N.M. 61, that felony DWI convictions were not “prior felony convictions” for purposes of the habitual offender sentencing. In that opinion, the Supreme Court noted that the DWI increasing sentencing scheme for DWI was itself an enhancement statute. Because the habitual offender

statute is so highly punitive, using an enhanced DWI conviction to increase a subsequent felony conviction may result in a double jeopardy challenge. In addition, many of the DWI convictions that formed the basis for the felony DWI conviction were not counseled. While the New Mexico Supreme Court found using these convictions to enhance DWI penalties was sufficient, it may not be the same for enhancing non-DWI felonies.

The DOT states that the provisions of this bill bring New Mexico into compliance with federal requirements regarding commercial vehicles by lowering the legal breath or blood alcohol concentration from .08 to .04.

## **FISCAL IMPLICATIONS**

### Administrative Office of the Courts (AOC).

AOC notes this bill mandates treatment; however, no money is allocated for treatment of the indigent. They question whether there are sufficient treatment centers statewide to accommodate every DWI habitual offender or repeat offenders.

The AOC states that any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### Corrections Department (CD).

The CD notes the bill will increase costs to the CD in later years since there will be a greater number of offenders sentenced to prisons as habitual offenders. However, the increased penalties may act as a deterrent, or if the mandatory treatment programs may lower the recidivism rate, the bill could reduce costs to the CD.

The contract or private prison annual costs of incarcerating an inmate based upon Fiscal Year 03 actual expenditures is \$20,720 per year for males. The cost per client to house a female inmate at a privately operated facility is \$26,313 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract or private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,452 per year. The cost per client in Intensive Supervision programs is \$2,852 per year. The cost per client in department-operated Community Corrections programs is \$4,371 per year. The cost per client in privately-operated Community Corrections programs is \$9,151 per year. The cost per year for male and female residential Community Corrections programs is \$20,725.

### Public Defender Department (PD).

The PDD is unable to accurately estimate the exact number of cases. The use of prior felony DWI's to enhance a subsequent felony conviction will increase the number of cases that go to trial. First, defense attorneys will warn clients facing DWI charges that their DWI convictions could result in substantial increases in penalty in all future cases. (Prior felony DWI's could in

crease the length of all future sentences by 1, 4, or 8 years for each new count.) Secondly, the increased sentences would reduce the number of subsequent cases that are resolved by plea bargains and increase the number of cases that go to trial.

### **ADMINISTRATIVE IMPLICATIONS**

The AOC claims there may be an administrative impact on the courts commensurate with the increase in caseload and/or in the amount of time necessary to dispose of cases. There may be an administrative impact on the magistrate courts related to monitoring defendants' attendance at treatment programs. At this time, many magistrate courts do not have compliance or probation officers to monitor second and third DWI offenders.

### **RELATIONSHIP**

SB99 relates to HB 94 and SB 144, duplicate bills that also amend Section 66-8-102(NMSA) .

### **OTHER SUBSTANTIVE ISSUES**

The DOT works closely with the Department of Health(DOH) on DWI issues. Currently, DOH has a database that tracks offenders through the required screening for all DWI offenders. If this bill does not require screening for all DWI offenders, the database will no longer be useful. The DOT utilizes this database through DOH for statistics and analysis.

**DW/lg:njw**