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## FISCAL IMPACT REPORT

SPONSOR Carraro DATE TYPED 1/31/05 HB \_\_\_\_\_

SHORT TITLE Use of Prior DWI Convictions at Sentencing SB 388

ANALYST Peery

### APPROPRIATION

| Appropriation Contained |      | Estimated Additional Impact |      | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY05                    | FY06 | FY05                        | FY06 |                      |               |
| NA                      | NA   | NA                          | NA   | NA                   | NA            |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Bernalillo County Metro Court (BCMC)  
 Department of Public Safety (DPS)  
 New Mexico Corrections Department (NMCD)  
 Public Defender Department (PDD)  
 Administrative Office of the District Attorneys (AODA)  
 New Mexico Sentencing Commission (NMSC)

#### No Responses

Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 388 adds 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.

### PERFORMANCE IMPLICATIONS

PDD states if a felony DWI conviction was to be used to enhance a non-DWI felony conviction, the proceedings would be subject to additional challenges. PDD reports this would increase the difficulty of habitual proceedings for the Department’s felony trial attorneys.

NMCD states the proposed legislation could negatively impact the performance of the Department prison programs if it causes a substantial increase in the number of incarcerated persons.

### **FISCAL IMPLICATIONS**

PDD states the use of prior felony DWIs to enhance any other subsequent felony conviction will increase the number of cases that go to trial.

NMCD reports the proposed legislation will probably cause minimal to moderate cost increases for the Department if it causes an increase in the number of persons placed in prison.

NMSC states the proposed legislation would result in longer prison terms for repeat DWI offenders. Additional years added to current DWI sentences will translate to a significant need for prison beds in the immediate future and even more over time.

### **ADMINISTRATIVE IMPLICATIONS**

NMCD states current levels of prison staff may have to work with and provide services for an increasing number of inmates if the proposed legislation is enacted.

### **OTHER SUBSTANTIVE ISSUES**

PDD reports in *State v. Begay*, 2001 NMSC 2, 130 N.M. 61, the Supreme Court considered whether pursuant to the Habitual Offender Act, a prior felony conviction of DWI may be used to increase any subsequent felony. The Court held that in the absence of clear evidence that the legislature intended to authorize that result, felony DWIs could not be used for enhancement purposes. The proposed legislation clarifies the Legislatures' intent to authorize the use of prior felony DWI convictions for habitual offender purposes.

PDD states the proposed legislation if enacted would be challenged as a violation of a person's right to be free of double jeopardy and right to assistance of counsel.

NMSC reports the proposed legislation would create a scenario where mandatory minimums for felony DWI convictions would be set forth in two separate sections of law. NMSC states if the proposed legislation is to make DWI convictions subject to the provisions of the Habitual Offender statute, the bill would require an amendment to remove the escalating sanctions and mandatory minimums for felony DWI convictions from NMSA 1978, Sections 66-8-102.

RLP/yr