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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/12

SPONSOR Munoz and Lewis LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE DWI Convictions for Sentencing SB 297

ANALYST Sánchez

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

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			\$7,322.4	\$7,322.4*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

**\*Costs to incarcerate inmates convicted of sixth and subsequent DWI offenses will continue past FY14. The amounts above are based on the trend reported by NMSC continuing.**

Conflicts with HB27, Companion to HB158, Duplicates HB108

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the District Attorneys (AODA)
- Administrative Office of the Courts (AOC)
- Public Defender Department (PDD)
- New Mexico Corrections Department (NMCD)
- Department of Transportation (DOT) Response to HB108
- New Mexico Sentencing Commission (NMSC) Response to HB108

### SUMMARY

#### Synopsis of Bill

Senate Bill 297 proposes to increase the penalties for DWI outlined in Section 66-8-102 NMSA 1978. For a fourth DWI conviction, which is already a fourth degree felony, the term of imprisonment would increase from eighteen to thirty months. For a fifth DWI conviction, which is already a fourth degree felony, the term of imprisonment would remain three years, but the portion which cannot be suspended, deferred or taken under advisement would increase from one year to two years. For a sixth DWI conviction, the term of incarceration for this third degree felony would increase from thirty months to forty two months, and the period which cannot be suspended, deferred or taken under advisement would increase from eighteen months to thirty months. For a seventh DWI conviction, the term of imprisonment for this third degree felony would increase from three years to four years, and the period which cannot be suspended, deferred or taken under advisement would increase from two to three years. For an eighth or

subsequent DWI conviction, the bill would make the conviction a second degree felony pursuant to with a term of incarceration of twelve years, ten years of which could not be suspended, deferred or taken under advisement.

## **FISCAL IMPLICATIONS**

The New Mexico Corrections Department (NMCD) reports that it currently incarcerates 277 inmates in its custody convicted of a fourth or subsequent DWI. If the Governor and Legislature choose to pass this bill in the interests of enhancing public safety, the bill will impact NMCD.

The New Mexico Sentencing Commission (NMSC) reports in its response to HB108 that on June 30, 2011 the NMCD had

- 44 offenders committed to the custody of the NM Corrections Department had a fourth conviction for DWI as their highest charge.
- 64 offenders committed to the custody of the NM Corrections Department had a fifth conviction for DWI as their highest charge.
- 56 offenders committed to the custody of the NM Corrections Department had a sixth conviction for DWI as their highest charge.
- 74 offenders committed to the custody of the NM Corrections Department had a 7<sup>th</sup> or subsequent conviction for DWI as their highest charge.

If the number of convictions for fourth and subsequent DWI offenses continues to mirror those of June 30, 2011, the impact to the NMCD will be felt the latter half of FY14. The 238 inmates will cost the department \$7.3 million and will likely remain steady if treatment is not a part of the solution.

According to the Administrative Office of the Courts (AOD), 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.

## **SIGNIFICANT ISSUES**

As penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, and courtroom availability and jury fees.

The Public Defender Department (PDD) notes in its response: “The plain language of Section 66-8-102 states that DWI offenders are to be sentenced only under 66-8-102, which provides for mandatory sentences, enhancement based on the number of DWI convictions, treatment, and ignition interlocks. Under the proposed amendment, the state would be able to “double enhance,” once under Section 66-8-102, based on the number of DWI convictions, and second, under Section 31-18-17. Under the proposed amendment, a person who is convicted of a first felony DWI could be sentenced to nine and a half years if he/she has prior regular felonies, rather than the eighteen months mandated by Section 66-8-102(G).

The proposed amendment would completely confuse the existing system for felony sentencing, which does not apply to prior DWI convictions, because they are not enhanced as regular habitual prosecutions.

If felony DWIs become part of the regular scheme for habitual offenders, many felony DWI convictions that are now used to enhance the sentence under Section 66-8-102 will be lost for enhancement purposes because they are not in the correct offense/punishment order that is required for enhancing ordinary felonies.

The Department of Transportation's (NMDOT) reports that one of its goals is to reduce motor vehicle related DUI crashes, injuries, and deaths. The NMDOT reports that increasing penalties for repeat DUI offenders would reduce recidivism and help the NMDOT reach its safety goals. However, leading experts at the National Conference of State Legislatures, the Pew Institute, and American Correctional Association, American Civil Liberties Union, US Department of Justice, VERA Institute of Justice, National Institute of Corrections, the Center for Effective Policy and the Urban Institute all agree that treatment needs to be part of the solution because incarceration has proven not to be an effective deterrent.

### **PERFORMANCE IMPLICATIONS**

The AOC reports that this bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type.

The NMDOT Programs and Infrastructure Program measures include one measure impacted by DWI-related offenses

- Number of alcohol-related traffic fatalities.

### **ADMINISTRATIVE IMPLICATIONS**

The NMCD reports prison staff vacancies at approximately 21 percent. If the bill will eventually increase the inmate population substantially, it will eventually increase the workloads of current prison staff.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Conflicts with HB27.

Duplicates HB158 and HB108

Relates to SB298.

### **ALTERNATIVES**

None. Stiffer penalties for DWI crimes appear to be needed to enhance public safety and to deter further DWIs.

ABS/svb