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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/12

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

SHORT TITLE Increase Certain DWI Penalties SB 298

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 HB108, Duplicates HB158

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Corrections Department (NMCD)  
 New Mexico Sentencing Commission (NMSC)  
 Administrative Office of the District Attorneys (AODA)  
 New Mexico Department of Transportation (NMDOT)  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 298 would amend the habitual offender statute to require that a DWI felony conviction pursuant to Section 66-8-102 be considered a predicate felony offense that must be used in determining if the person is a habitual offender. Under the current habitual offender statute, persons convicted of more than one noncapital felony are considered habitual offenders whose basic sentences (for subsequent felony convictions) are increased by one year (for a second felony), four years (for a third felony) and eight years (for a fourth or subsequent felony). However, under the current law, DWI felony convictions (which are the fourth and any subsequent DWI convictions) pursuant to Section 66-8-102 are not considered felony convictions for purposes of determining habitual offender status/sentence enhancement.

## **FISCAL IMPLICATIONS**

According to the New Mexico Corrections Department (NMCD) this bill will not impact fiscally it during the relevant three year period. It may, however, impact the NMCD in subsequent years, as offenders convicted of two or more felony DWI offenses or two or more other felony offenses start being sentenced to the NMCD to serve longer prison sentences as habitual offenders. However, according to state statistics, DWI arrests continue to decline as well as DWI fatalities. If this trend continues, this bill may have a neutral fiscal impact.

The NMCD currently has approximately 68 inmates in its custody serving prison time on only a DWI felony conviction. NMCD currently has between 250 and 277 inmates in its prison custody serving prison time for a DWI felony conviction along with other convictions. In other words, a significant percentage of the NMCD's prison population consists of DWI Offenders. However, offenders already in the NMCD's custody or in the judiciary system will not be impacted by this bill.

At some point in the future, this bill will generally result in longer prison sentences for multiple DWI felony offenders and in longer prison sentences for those offenders with multiple felony (including DWI) convictions. At some point, these longer or enhanced prison sentences will likely increase the NMCD's prison population.

## **SIGNIFICANT ISSUES**

The New Mexico Sentencing Commission (NMSC) reports that on June 30, 2011:

- 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.

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:

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- 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 the sentencing in HB27 and Companion to HB108, Duplicates SB298.

**OTHER SUBSTANTIVE ISSUES**

The Administrative Office of the District Attorney's opines that the safety of the citizens of New Mexico seems to demand that much like violent offenders the best way to treat chronic DWI offenders is apparently to keep them off the streets for as long as possible.

**ALTERNATIVES**

None. Stiffer penalties for DWI appear to be needed to enhance public safety and to deter citizens from driving while under the influence of alcohol or drugs.

ABS/amm