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FISCAL IMPACT REPORT

SPONSOR Padilla **ORIGINAL DATE** _____ **LAST UPDATED** _____ **HB** _____

SHORT TITLE Jail Transport to Treatment Fund **SB** 260

ANALYST Sánchez

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|---------|---------|---------------------------------|--------------------------------|
| FY16 | FY17 | FY18 | | |
| | \$599.3 | \$599.3 | Recurring | Transport to Treatment Fund |

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY16 | FY17 | FY18 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | | NFI | NFI | NFI | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 State Treasurers' Office (STO)
 Attorney General's Office (AGO)
 New Mexico Corrections Department (NMCD)
 Public Defender Department (PDD)
 Bernalillo County Metropolitan Court (BCMC)
 New Mexico Sentencing Commission (NMSC)

Responses Not Received From

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 260 proposes to create a new mandatory \$5 transport to treatment fee to be collected by the all the courts except municipal courts upon conviction of a penalty assessment misdemeanor, traffic violation, petty misdemeanor, misdemeanor or felony offense. The bill also creates a fund (transport to treatment fund) into which all fees collected are to be deposited. The fund is to be administered by Department of Finance and Administration (DFA) and distributed to county sheriffs to defray the cost of transporting offenders from jail to a court-ordered treatment facility.

FISCAL IMPLICATIONS

This bill creates a new fund and provides for continuing appropriations to DFA for county sheriffs. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities. Any unexpended balances remaining at the end of any fiscal year shall revert to the general fund.

The AOC estimates that this fee will collectively generate approximately \$599,300 annually from District, Metropolitan and Magistrate courts statewide, to be deposited in the transport to treatment fund.

NMCD reports that the bill could reduce its transport costs by a minimal degree. In some cases, NMCD does transport paroling inmates directly to a treatment program.

The responding agencies reported minimal impact of adding a new fee. The administrative burden of fund would fall on DFA who did not respond so a budgetary impact cannot be estimated.

SIGNIFICANT ISSUES

According to NMSC, the impetus for fees includes a number of philosophical purposes: punishment, reparation, cost recovery, and revenue production. Over time, local, state, and federal governments have imposed an array of fines, fees, costs, penalties, surcharges, forfeitures, assessments, reimbursements, and restitutions that are levied against people convicted of criminal offenses. A report by the [Center for Community Alternatives](#) states that the imposition of fees on people convicted of a criminal offense threatens the successful reintegration of people returning to their communities from jails and prisons as self-supporting, law abiding citizens.

Data shows that financial penalties are being imposed upon people with little, if any, means to pay the costs. A [Bureau of Justice Statistics](#) report indicates that about 80% of all defendants charged with a felony are represented by public defenders.

The AODA reports that most offenders are indigent and these fees, along with all the others, will be uncollectible. Traditionally, when a defendant is unable to pay their fees, they end up spending more time in the criminal process litigating whether they had an ability to pay, hence

costing more time and money to the system in an effort to collect fees, including as an issue in probation revocation.

PDD opines that SB 260 would add yet another fee to the veritable laundry list of mandatory fees already attached to sentences. While transportation of offenders to required treatment is a necessary cost, this method of funding is problematic. There are already a large number of fees that cannot be waived on such convictions; adding yet another fee is going to increase non-payment problems. Non-payment of fees by indigents commonly leads to warrants and county jail time, which require the involvement of county, courts, PDD, police and DA resources to resolve. The U.S. Department of Justice recently sponsored a conference in Washington D.C. inviting Court Administrative Directors and Staff from around the country to address this ever growing problem.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to the General Appropriation Act.

TECHNICAL ISSUES

AOC points out that Section 66-8-116.3 NMSA lists the fees to be assessed in addition to the penalty assessment established for each penalty assessment misdemeanor; however, SB 260 does not propose to amend Section 66-8-116.3 to include the \$5 fee required by the bill.

BCMC states that the reference to “traffic violation” is imprecise and duplicative. Currently, the Motor Vehicle Code does not contain a definition for “traffic violation.” *See* NMSA 1978, § 66-1-4.17 *Definitions*. Furthermore, even when a crime is considered an offense under the Motor Vehicle Code or presumably what is intended by the reference in the bill to “traffic offense,” it is still categorized as a felony, misdemeanor, penalty assessment misdemeanor, or a petty misdemeanor. NMSA 1978, § 66-8-7(A) provides that “[i]t is a misdemeanor for any person to violate any provision of the Motor Vehicle Code [Section 66-1-1] unless the violation is declared a felony.” However, the New Mexico Court of Appeals in *State v. Trevizo*, 2011-NMCA-069, “[R]ead the Legislature’s use of ‘misdemeanor’ in Section 66-8-7 as merely making th[e] distinction [between misdemeanors and felonies] and not as precluding treatment of violations of the Motor Vehicle Code as petty misdemeanors.”

OTHER SUBSTANTIVE ISSUES

The AGO reports that transportation of offenders to treatment was a recommendation by its Violent Crime Case Review Team as incorporated in the “VCCRT” Final Report.

The AODA expresses concern about how funds would be fairly allocated between sheriffs’ offices because outlying counties bear the brunt of costs to centralized treatment facilities.

AMENDMENTS

BCMC suggests amending the bill deleting the reference to “traffic violation” in Section 1(A), line 24 as that term is unnecessary and is already covered by the remaining references to petty misdemeanor, penalty assessment misdemeanor, misdemeanor, and felony in the bill.