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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/05/13

SPONSOR Brown LAST UPDATED \_\_\_\_\_ HB 587

SHORT TITLE Drug Trafficker Registration & Notification SB \_\_\_\_\_

ANALYST Trowbridge

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	\$1065.0	\$987.5	\$2052.5	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: HB 437 (also amending the DNA Identification Act); HB 570, HB 446, HB 451 and HB 452 (amending the Sex Offender Registration and Notification Act, upon which HB 587 appears to be based).

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
 New Mexico Sentencing Commission (NMSC)  
 Administrative Office of the District Attorneys (AODA)  
 Administrative Office of the Courts (AOC)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 587 (HB 587) enacts the “Drug Trafficker Registration and Notification Act,” modeled after the Sex Offender Registration and Notification Act or SORNA, which would require persons convicted of a first degree drug trafficking offense pursuant to state, federal, tribal or military law, and with specified connections to New Mexico, to register with law enforcement . The Act provides a fourth degree felony penalty for a drug trafficker who willfully or knowingly fails to comply with the Act’s registration requirements or who willfully or knowingly provides false information for the registration requirements, and a third degree felony penalty for a second or subsequent conviction. HB 587 provides that the willful failure to comply with any registration requirement in the Act or the willful providing by a drug trafficker of false information for the registration requirements shall be deemed part of a continuing

transaction or occurrence. The Act further provides that a conviction based on failure to comply with registration requirements or to provide false information for registration requirements shall not be considered a felony for purposes of the imposition of sentencing enhancements pursuant to Section 31-18-17 NMSA 1978.

HB 587 provides procedures to be followed should a drug trafficker intend to move from New Mexico to another state.

The Act provides for both a local registry maintained by a county sheriff and a central registry, maintained by the Department of Public Safety (DPS). Registration information may be requested from appropriate officials. HB 587 also provides for the establishment and management by DPS of an internet web site providing the public with drug trafficker registration information.

HB 587 requires a court to notify a convicted trafficker, in writing, of the duty to register in the judgment and sentence forms provided to the trafficker. A convicted trafficker must also be informed, in writing, of the duty to register at the time of release.

The Act provides immunity for a public employer, public employee or public agency responsible for enforcement of the Act so long as the person or agency complies with the provisions of the Act.

HB 587 amends Section 29-16-3 NMSA 1978, the definitions section within the DNA Identification Act, to expand the definition of “covered offender” to include a drug trafficker required to register pursuant to the Drug Trafficker Registration and Notification Act. The Act defines “drug trafficker DNA identification system” to mean the drug trafficker DNA identification system established pursuant to the DNA Identification Act, the establishment and administration of which is to be overseen by the DNA Oversight Committee, which is required to adopt rules and procedures regarding the administration and operation of the system as part of the DNA identification system.

The Act contains a severability clause and an effective date of July 1, 2013.

## **FISCAL IMPLICATIONS**

The Public Defender Department (PDD) reports that enactment of the proposed legislation would require additional PDD FTEs to handle the onslaught of registration offenses. A conservative estimate is that **eleven** new PD3 (operating attorney) positions would be required around the state, as well as **five** new staffers (3 secretaries and 2 paralegals) to support them. PD3s carry start-up costs of \$77,000 and recurring costs of \$72,000; new secretaries cost \$42,000 to start and \$37,500 recurring; paralegals cost \$46,000 to start and \$41,500 recurring.

The Administrative Office of the District Attorneys (AODA) indicates that this bill has minimal anticipated fiscal impact to the district attorneys. To the extent HB 587 creates new crimes related to violations of its provisions, the district attorneys may have increased prosecutions and costs associated with those prosecutions. The president of the New Mexico District Attorney’s Association or his representative serves on the DNA identification system oversight committee, and that committee will have increased duties related to establishing and administering a drug trafficker DNA system. The AODA expects HB 587 will have a much greater fiscal impact on the agencies charged with its administration, especially the county sheriffs and the DPS.

The New Mexico Corrections Department (NMCD) reports the bill could result in a few fourth degree felony convictions for drug traffickers who fail to register or who provide false registration information. This will likely result in only a minimal number of such offenders sent to prison or placed on probation or parole for these new crimes. The fiscal impact will therefore likely be minimal.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$38,070 per year in a state-owned and operated prison to \$31,686 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$29,375 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$2,227 per year. The cost per client in Intensive Supervision programs is \$4,311 per year. The cost per client in Community Corrections is \$3,489 per year. The cost per client per year for female residential Community Corrections programs is \$33,281 and for males is \$21,728.

The NMCD indicates the bill may also result in some minimal or small number of convicted drug traffickers having to pay the \$100 DNA fee, which will be placed into the DNA fund.

The Administrative Office of the Courts (AOC) states there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law, commenced prosecutions pursuant to the law and to any drug trafficker registration requirements involving court action and participation. 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**

The PDD maintains that there are many more people who would be required to register under this bill's proposed legislation than are required to be registered under SORNA. Fiscal implications are likely to be enormous.

The New Mexico Sentencing Commission (NMSC) indicates the proposed legislation is similar to a bill introduced in Congress in 2006. The Communities Leading Everyone Away from Narcotics Through Online Warning Notification (CLEAN TOWN) Act created a nationwide online registry of convicted illegal drug dealers and manufacturers, which would be accessible by the public and federal, state and local law enforcement.

The AODA notes that Section 2 of HB 587 justifies the registration of drug traffickers on grounds similar to those used to justify registration of sex offenders: a significant risk of recidivism, law enforcement's need for information on these offenders, and a need to provide information to the public

The AOC states that the Drug Trafficker Registration and Notification Act is similar to the SORNA in many respects. Currently, under the Sex Offender Registration and Notification Act, sex offenders with specified connections to New Mexico must register when convicted of a sex offense “pursuant to state, federal, tribal or military law.” The HB 587 Act, in defining “drug trafficker,” requires registration by a person convicted of a first degree drug trafficking offense also “pursuant to state, federal, tribal or military law,” when other specified conditions are met. Legislation proposed during this 2013 session, HB 446 and HB 570, proposes to amend the SORNA in differing ways, to bring those convicted of sex offenses in foreign nations within the registration requirements. While it may be impractical to think that a person convicted of a drug trafficking offense in a foreign nation would register, it might be worth looking at requiring registration under the law, considering New Mexico’s proximity to foreign nations and the amount of drugs and drug traffickers potentially moving into New Mexico from these foreign nations.

### **PERFORMANCE IMPLICATIONS**

The AOC states that the courts are participating in performance-based budgeting. 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

### **ADMINISTRATIVE IMPLICATIONS**

The NMCD reports it will be required to take DNA samples of (and collect the DNA fees from) convicted drug traffickers who are in its custody or control, and will be required to provide written notices to the traffickers of their duty to register before they discharge or parole. The NMCD should be able to absorb this additional administrative impact at current staffing levels, as well as be able to update or revise its policies and procedures to encompass these requirements. However, if the NMCD were to receive a large number of convicted drug traffickers incarcerated in its prisons or placed on probation or parole supervision, the requirements of this bill might require additional staff at some point.

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

HB 437 also amends the DNA Identification Act, extending its application to human trafficking offenses.

Other bills would amend SORNA, the act upon which HB 587 is based. See HB 570, HB 446, HB 451 and HB 452. If some of the proposed changes to SORNA are passed, and HB 587 remains unchanged, the administration of the two registration programs may be significantly different. For example, HB 570 would require the DPS, rather than the county sheriffs, to administer the program for sex offenders. HB 587 would have the county sheriffs administering the program for drug traffickers.

### **AMENDMENTS**

The AOC suggests requiring registration pursuant to the Act for persons convicted of drug trafficking offenses in foreign nations. (See Significant Issues above.)

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

There will be no registration of convicted drug traffickers.

TT/svb