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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/14

SPONSOR Griggs LAST UPDATED _____ HB _____

SHORT TITLE DWI While on a Suspended License SB 288

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Public Defender Department (PDD)
 Department of Transportation (DOT)
 Department of Health (DOH)
 Attorney General’s Office (AGO)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

Senate Bill 288 proposes a new Section 66-5-39.2 NMSA 1978 “If the person’s privilege to drive was revoked or suspended for DWI or refusal, and if the person is convicted of suspended/revoked under Section 66-5-39 or 66-5-39.1 NMSA 1978 and that revocation was for DWI, then that person is guilty of a fourth degree felony. . .” In addition, “the fine and imprisonment shall not be suspended, deferred or taken under advisement.”

The bill also proposes to amend Section 66-5-41 NMSA 1978 to impose accomplice liability on a vehicle owner who authorizes or knowingly permits another to drive the owner’s vehicle if the driver’s license was revoked at the time for DWI, and the driver is arrested for DWI. This means that the owner giving permission may be charged (and convicted) with driving while revoked, as well as, presumably, permitting an unauthorized person to drive, under Sections 66-5-39.1 and 66-8-120 NMSA 1978.

FISCAL IMPLICATIONS

The intent of this bill is to increase the penalty for a person convicted of a second or third DWI from a misdemeanor to a felony, when that person is convicted at the same time of driving while revoked on a license that was revoked for a DWI or refusal. This bill apparently could result in a felony conviction carrying a mandatory 18 months in prison for persons convicted of a second or third DWI together with a license revoked for DWI. This could generate more litigation as well as increase incarceration costs. The proposed legislation could result in both an increase in the number of prosecutions in the metropolitan and magistrate courts and an increase in the number of trials.

DWI offenders with fewer than four DWI convictions who are convicted of this new fourth degree felony could now be incarcerated in NMCD prisons on the new fourth degree felony. There could be a significant number of DWI (first, second or third offense) offenders who are convicted of driving on a revoked or suspended license who could now be sent to NMCD for incarceration if convicted.

SIGNIFICANT ISSUES

Currently the misdemeanors of permitting an unauthorized person to drive in violation of Section 66-5-41 NMSA 1978, or permitting an unauthorized minor to drive, Section 66-5-40 NMSA 1978, are “penalty assessment misdemeanors” carrying a penalty assessment of \$25 and \$50 respectively. Under this bill, a vehicle owner found guilty of driving while revoked as an accomplice would face a mandatory 7 days in jail, if the unauthorized driver’s license had been revoked for DWI; and a fine of not less than \$300. Judges are not allowed to suspend any of the jail time or fine, and pleas to lesser offenses are not allowed.

This bill creates a new felony charge which previously would have been charged in the magistrate court. Under this bill, the charge must be tried in district court and there will be a large increase to the number of cases filed therein. There will be a need for an increase in resources to the district court to handle the increase in caseload.

DWI repeat offenders were responsible for an increasing proportion of fatalities from 2009 to 2011, according to data from DOT fatality logs and Motor Vehicle Division (MVD) citation records. In 2009, 35 percent of all DWI-related fatalities involved a repeat offender. By 2011, 58 percent of DWI-related fatalities involved a repeat offender.

OTHER SUBSTANTIVE ISSUES

AGO provided the following analysis:

The new sentencing provision at section 1 of the Bill, concerning repeat convictions of Driving While Suspended or Revoked (when already Suspended or Revoked for a DWI and when committing a new DWI) appears to be in conflict with the language of a current provision in subsection (A) of to Section 66-5-39 NMSA 1978 that imposes a specific penalty for any conviction for driving while suspended or revoked when an offender is also convicted for DWI or violating the implied consent act. The current language of subsection (A) of Section 66-5-39 NMSA 1978 contains wording very similar to the new language in section 1 of the bill, with both stating “Notwithstanding any other provision

of law...” and then going on to define a particular penalty for a conviction under the terms laid out. This contradiction between the penalty provision of the existing statute and the new statute to be created by section 1 of the bill would need to be resolved.

EC/svb