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## FISCAL IMPACT REPORT

SPONSOR: Cararro DATE TYPED: 03/15/01 HB \_\_\_\_\_  
 SHORT TITLE: DWI Penalties SB 305/aSJC  
 ANALYST: Rael

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			\$ (200.4)	Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)  
 Department of Public Safety (DPS)  
 Public Defender (PD)  
 Taxation and Revenue Department (TRD)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of SJC Amendment

The amendments replaces the term "owned or available for the offender's personal use" with "driven".

1. In order to be eligible for a reinstated license, a subsequent offender must prove that each vehicle driven by him has been equipped with an ignition interlock device one year following reinstatement of his driver's license.
2. The mandatory period of five days in jail for a second conviction is amended to 120 hours.
3. A second and subsequent conviction will result in mandatory treatment.
4. Upon a subsequent conviction, an offender must have his vehicle impounded, immobilized or using an ignition interlock device for one year and prove one year of continuous legal, alcohol-free driving before the device may be removed.

#### Significant Issues

MVD felt that the original term "available for the offender's personal use" was vague and would be difficult to enforce. Replacing the term with "driven" does not appear to make the law any more enforceable.

## Senate Bill 305/aSJC -- Page 2

If a subsequent offender is not eligible for a reinstated license, how can he prove that his vehicle has been equipped with an ignition interlock device for one year following reinstatement of his license? Is a temporary or restricted license issued?

### Synopsis of Original Bill

This bill changes three provisions relating to DWI offenses and the “limited license” some drivers are allowed to receive (to drive to and from work or school only) after having their driver’s license revoked.

Section 1: Subsequent DWI offenders would be required to install an ignition interlock device for the first six months following reinstatement of their (regular) driver’s license.

Section 2: Laws 1999, Chapter 62 allowed 2<sup>nd</sup> and 3<sup>rd</sup> DWI offenders to obtain a limited license under the condition they are on probation and install an ignition interlock device on all vehicles they operate. This bill eliminates the possibility of a limited license for any 2<sup>nd</sup> or 3<sup>rd</sup> DWI offender.

Section 3: For a 2<sup>nd</sup> DWI offense the jail sentence would be revised from 72 consecutive hours to 5 consecutive days (120 hours) in jail. For other offenses such as aggravated DWI, subsequent convictions, or failure to comply with court-ordered treatment or programs, additional jail sentences are revised to specify consecutive hours “*of physical confinement*” in jail. For the period an offender’s driver’s license is revoked on a subsequent conviction, all vehicles owned by the offender would be impounded or immobilized.

### **FISCAL IMPLICATIONS**

The Public Defender anticipates the penalty increases for DWI will have significant impact on all DWI litigation. The Department’s estimate of cost is based upon the need for better tracking, investigation, early intervention strategies, and preparation of enhancement proceedings. The Department can most effectively meet these goals by hiring additional staff for more trials on misdemeanor (second offence), more contract attorney trial costs and more investigation work. The cost of \$200,000 for these new work requirements is the Department’s best estimate of the fiscal impact of this bill.

### **ADMINISTRATIVE IMPLICATIONS**

Increased penalties could have the potential to increase jury trials, thus requiring additional resources to handle these cases. It will cost the judicial system \$400 for statewide update, distribution, and documentation of statutory changes.

### **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

Duplicates HB 381. Relates to HB 457, SB 306.

### **TECHNICAL ISSUES**

Section 3 paragraph (F) (1) which attempts to change physical confinement in a jail from 72 consecutive hours to “5 consecutive days”. The current language requiring 72 consecutive hours was used because there was lack of clarity regarding what constituted a “day of” confinement.

### **OTHER SUBSTANTIVE ISSUES**

**Senate Bill 305/aSJC -- Page 3**

Section 1 provides MVD would not issue a driver's license to a subsequent offender unless an ignition interlock device is installed on any vehicle "*available for the offender's personal use*". According to the MVD, this provision is not administrable. The Division reports that it can not determine what vehicles might eventually be "*available for the offender's personal use*" at the time a driver's license is issued.

Section 66-5-35 NMSA 1978 (Section 2 of the bill) allows a limited license be issued under certain circumstances, "*limited to use allowing him to engage in gainful employment or to attend school,*". There is no provision allowing use of a limited license to attend DWI school, to attend Alcohol Screening sessions, or in the case of a medical emergency.

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