F I S C A L I M P A C T R E P O R T

SPONSOR Stapleton **ORIGINAL DATE** 2/3/2020 **LAST UPDATED** 2/18/2020 **HB** 61/aHFl#1

SHORT TITLE Return of An Ignition Interlock System **SB**

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NFI	NFI	NFI			Interlock Device Fund
$8.2	NFI	NFI	$8.2	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Conflicts with HB80

Responses Received From
New Mexico Department of Transportation (NMDOT)
Administrative Office of the Courts (AOC)
Law Offices of the Public Defender (LOPD)
New Mexico Attorney General (NMAG)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HFl#1 Amendments

The House Floor #1 Amendments: (1) replace the specific repayment amount of $975 with language requiring payment of the current retail value to replace an interlock device as one of three prerequisites to the reinstatement of a driver's license revoked upon a DWI conviction; provide that upon court order or an affidavit by the installer, TRD/MVD may reinstate the license of a person who fails to return an interlock device to the installer; and (3) strikes Section 2, which authorized use of the interlock device fund to cover the cost of replacing an interlock device for eligible indigent persons.

Because the amendments strike the new use of the interlock device fund to pay replacement costs for indigents, the operating budget impact table has been revised to show no fiscal impact to that

fund. In addition, the table now reflects the minor impact to TRD's Information Technology Division as reported by that department.

Synopsis of Original Bill

House Bill 61 amends a section of the Motor Vehicle Code to require the return of an ignition interlock device, submission of a police report of theft of the device, or payment of $975 to replace the device prior to reinstatement of a driver's license revoked pursuant to a conviction for driving while under the influence of intoxicating liquor or drugs (DWI). The bill also authorizes the use of the interlock device fund to cover the cost of replacement of an ignition interlock device for eligible indigent persons.

FISCAL IMPLICATIONS

NMDOT reports that currently there are over 11,570 individuals with an interlock device, and 2,184 of those individuals qualify for the ignition interlock subsidy. Although NMDOT does not track the number of lost or stolen devices, in FY19, the NMDOT paid approximately $576 thousand for eligible expenses from the fund, at a maximum subsidy of $460 per eligible client for the installation, monthly service and removal of a device. The balance in the fund at the end of that fiscal year was $2.1 million. In FY19, there were 163 licensed installers who, if still licensed, could apply for payment from the fund in the event an eligible indigent user loses a device.

As AOC notes, the basis for the $975 fee for a lost device is not clear.

SIGNIFICANT ISSUES

LOPD advises that there is a rental contract between a device user and a device installer; an installer already is afforded a civil remedy if a device is not returned.

Although NMDOT (through the traffic safety bureau) manages the fund for interlock devices, TRD through its Motor Vehicle Division administers the interlock requirements as to actually issuing licenses. The intent of the bill appears to be to assist drivers in removing the interlock devices from their vehicles and restoring the installers to monetary wholeness, along with providing funding for replacement for indigent drivers seeking reinstatement. However, TRD/MVD warns this bill does not address potentially more significant criminal versus administrative differences related to interlock requirements, and could result in even more confusion to those affected drivers and frustration on the part of MVD customers when they are told of the different administrative requirements.

MVD cites, as an example, the result when a second time DWI offender pleads guilty to a lesser charge of DWI first offense for the person's second DWI and the criminal court sentences the driver to use of an interlock for a period of one year. See Section 66-8-102(O), NMSA 1978. In that instance, MVD will require that driver to have an interlock for a period of two years as required by that section because of the total number of DWI convictions the driver has. If, at the end of the criminal sentence, the driver returns his interlock device to the installer, the driver will not be legally able to drive or to reinstate his license privileges; the driver will still need to comply with the full two-year interlock requirement for a second conviction.

As to the provisions of HB61 in particular, TRD/MVD contends its additional conditions for reinstatement likely will result in numerous drivers prematurely removing their interlock devices when they believe they have complied with a criminal court's sentencing requirements, but when the administrative requirements of MVD have not yet been met. As a result, drivers whose licenses have been revoked and have turned in their interlocks will be driving illegally.

In a similar vein, LOPD comments that adding more hurdles to license reinstatement may lead to more people driving on a revoked license, particularly in parts of the state that lack public transportation options.

DUPLICATION

HB61 duplicates HB80.

OTHER SUBSTANTIVE ISSUES

LOPD comments that interlock devices already impose expenses on persons required to have them installed and then pay rental on them. Although there is a fund to assist indigent defendants with this expense, LOPD reports it is not always funded, not all defendants are made aware of it, and the expense can be burdensome even on defendants who do not meet the criteria for indigence. This is true at a time when New Mexico has been criticized for the burdensome nature of mandatory court fees. *See* https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines. While this bill does not directly change the status quo in this area, the potential for charging defendants for a lost device could create additional hurdles and disincentives to license reinstatement for a vulnerable population.

AMENDMENTS

NMAG points to two provisions which it suggests clarifying:

1) Noting that the initial interlock device installer may cease to exist before the device is returned, NMAG suggests the phrase "or other entity as permitted by the bureau" be inserted in Section 1(B)(7) and (C); and
2) Because the cost of a device may change over time, NMAG suggests the bureau be given authority to adjust the $975 charge established in the bill.

This bill leaves intact Section 66-5-33.1(B)(6) NMSA 1978: "evidence of verified active usage as that phrase is defined by the bureau", without further definition of what "verified active usage may be". Given the interplay between DOT and MVD, and the fact that DOT has not defined "verified active usage", MVD suggests a legislative definition of that term might be helpful.

MD/sb/rl