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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/07

SPONSOR Altamirano LAST UPDATED _____ HB _____

SHORT TITLE DUI Vehicle Seizure SB 273

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Taxation and Revenue Department (TRD)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 273 provides for vehicle seizure and towing or immobilization upon the arrest of a person driving under the influence of intoxicating liquor or drugs. Under the bill, the vehicle will be released under the following conditions:

If the person arrested is the owner of the vehicle, the vehicle shall not be released unless an ignition interlock is installed within 60 days or the vehicle is forfeited to the state pursuant to the Forfeiture Act.

If the person arrested is *not* the owner of the vehicle, the owner may obtain the vehicle without installation of an ignition interlock upon submission of a statement affirming that the owner will not allow the person arrested for driving under the influence to drive the vehicle. The owner's statement shall be forwarded by the towing facility to the Motor Vehicle Division (MVD) of the Taxation and Revenue Department. MVD will keep the statement with the vehicle's registration records, and if the person arrested is found to again be driving the vehicle, it will be forfeited to the state pursuant to the Forfeiture Act.

FISCAL IMPLICATIONS

The proposed measure, according to TRD, would generate insignificant impacts on state and local revenue sources because in most cases drivers would install ignition interlock devices rather than allow their vehicles to be seized and sold.

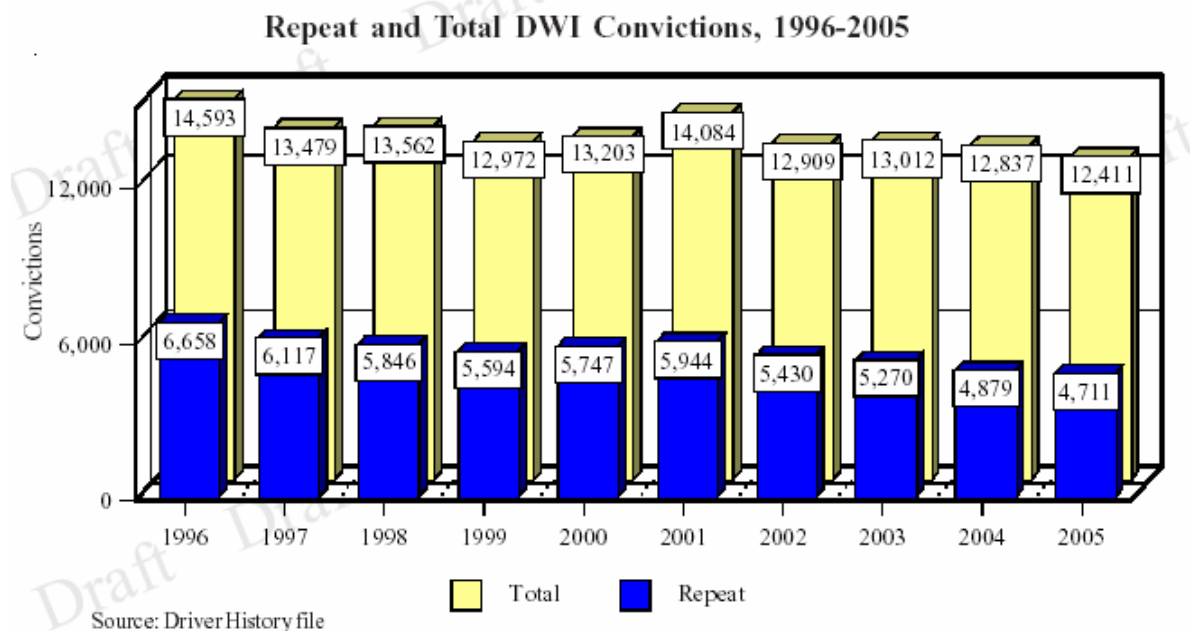
SIGNIFICANT ISSUES

Should the vehicle be forfeited, pursuant to the Forfeiture Act, because the driver is the owner and fails to have the ignition interlock device installed, the State should follow the principals enunciated in *State v. Nuñez*, 2000-NMSC-013, 129 N.M. 63, 2 P.3d 264, to avoid double jeopardy concerns.

The purpose of the Forfeiture Act, in part, is “to protect the constitutional rights of persons accused of a crime and of innocent persons holding interests in property subject to forfeiture.” NMSA 1978, § 31-27-2(A)(2). There is a presumption in the Forfeiture Act that the driver is the owner or has interest in the vehicle. The Forfeiture Act does not speak to property owned in whole by someone other than the driver. *See* NMSA 1978, § 31-27-6(D) (providing that the State must prove by clear and convincing evidence that the person charged with the crime for which the property is alleged to be property subject to forfeiture is the owner of the property). This particular provision in the bill runs afoul of basic constitutional principles.

PERFORMANCE IMPLICATIONS

Vehicle seizure statutes are currently in place in Albuquerque and Santa Fe. Statistics published by the New Mexico Department of Transportation¹ indicate 12,411 New Mexico drivers were convicted for driving while under the influence of alcohol in 2005. Of this group, 4,711 were for repeat offenders. As shown in a chart from the report reproduced below, the number of DWI convictions statewide fell from about 14,600 in 1996 to 13,000 in 2001, and has remained relatively stable since then.



¹ 2005 Draft DWI Report, New Mexico Department of Transportation, on the Internet at: <http://www.unm.edu/~dgrint/dwi.html>.

ADMINISTRATIVE IMPLICATIONS

Implementing provisions of the measure would result in substantial administrative costs to the Taxation and Revenue Department. Computer system impacts would include development of a new web application for entering and handling DWI forfeiture of vehicle data (estimated at approximately 1,000 hours of programming time). Implementation would also require rewriting the driver and vehicle system to link vehicle and driver information and automate the sweep of DWI citations on a driver and the vehicle that was used and if any statements of forfeiture are present (3000 hrs.). The Motor Vehicle Division would be required by SB-273 to keep the non-DWI-driver owner's statement with the vehicle's registration records. It would also be necessary for MVD to work with law enforcement agencies to develop a system for tracking and making that information available, presumably as an automatic records check on any vehicle driven by an individual with a history of DWI.

TECHNICAL ISSUES

Taxation and Revenue Department indicates that the proposed measure may generate legal problems concerning responsibilities of tow companies. Provisions of the statute are, for example unclear whether, when a car is impounded, towing companies would be responsible for releasing it. The measure is similarly not clear regarding what evidence towing firms would base decisions to release vehicles. And although towing firms would be responsible for sending statements by owners to MVD, the proposed legislation does not indicate when this is to occur, or what happens if a towing company fails to send the document to MVD. The bill should therefore set forth towing firms obligations and provide some type of sanction in cases where towing firms fail to follow the law.

The proposed statute provides no concrete guidance on what statement by the owners of impounded vehicles should indicate when retrieving their vehicles. It might be appropriate to stipulate that MVD would develop affidavit forms for this purpose.

The proposed statute does not define the term "immobilized".

The proposal does not specify who would be responsible for tracking vehicles requiring interlock installation (page 2, lines 4-9) or how or who would determine if interlock devices are installed within sixty days, who notifies the owner, and who conducts the forfeiture of the vehicle to the State (page 2, lines 4-9).

OTHER SUBSTANTIVE ISSUES

The district attorneys point out that if this bill is passed, there will need to be an organized system to oversee that the offenders whose vehicles are seized do indeed obtain an ignition interlock device. A few years ago when the main ignition interlock bill was passed, no one was concerned about the oversight of such a system. Merely ordering someone to obtain an ignition interlock does not necessarily mean that individual will comply with a court order.

Furthermore, the forfeiture procedure should be a moneymaker for the local city or county that will implement the forfeiture laws. That funding can be used to assist and maintain support staff dealing with forfeiture issues.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The district attorneys suggest that there is a strong possibility that if this bill is not enacted, then the DUI offender still will be driving his/her car and pose a continuous danger to the driving community. By seizing the offender's property, it will send a strong message that his/her personal property will be taken away from him/her to the offender's detriment.

POSSIBLE QUESTIONS

- 1) What coordination is there with the Ignition Interlock Licensing Act, Section 66-5-501 et. seq. NMSA 1978, requiring a person to apply for an ignition interlock license?
- 2) How long is the person required to use the ignition interlock device?
- 3) What provisions are there for indigent individuals? Section 66-8-102 requires an offender, upon conviction of DWI, to pay all costs associated with installation of an ignition interlock, unless the court determines that the offender is indigent.

EO/csd