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FISCAL IMPACT REPORT

ORIGINAL DATE 02/05/09

SPONSOR Rodefer LAST UPDATED _____ HB 172

SHORT TITLE No Alcohol Sales to Persons on Probation SB _____

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.01*	\$0.01*	\$0.02*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

(* Indeterminable but estimated to be moderate)

Relates to HB226
Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Public Defender Department (PD)
Regulation and Licensing Department (RLD)
Adult Parole Board (APB)
New Mexico Corrections Department (NMCD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 172 amends section 31-20-6 NMSA 1978 to add an additional condition that a court at its discretion may add to an order deferring or suspending sentence: a prohibition from purchasing or consuming alcohol. The new condition also directs that the defendant surrender any current driver's license or identification card issued by the motor vehicle division and pay for a new license or identification card that includes a printed legend indicating that the person is prohibited from purchasing alcoholic beverages. The court is directed to forward any surrendered driver's licenses or identification cards to the motor vehicle division, together with the order authorizing issuance of the new license or card with the printed legend.

Section 31-21-10 NMSA 1978, regarding parole authority and procedure, is amended to give the parole board the discretion to require, as a condition of parole, that the inmate not purchase or consume alcoholic beverages. Conditions regarding surrender of license and identification card, and their replacement, are the same as those listed for the court order deferring or suspending sentence.

The bill adds a new section to the Liquor Control Act. The section specifies (1) that a licensee or a licensee's agent shall not sell alcoholic beverages to anyone with a driver's license or identification card that indicates the bearer is prohibited from purchasing alcohol; (2) a first or second violation by a licensee is a misdemeanor, while a third or subsequent is a fourth degree felony; and (3) it is an "affirmative defense" that the licensee demanded and was shown a valid identification card containing the bearer's picture and documenting the bearer's age.

Section 60-6C-1 is amended so that the director of the alcohol and gaming division may suspend or revoke the license of or fine a licensee for selling, serving, or giving an alcoholic beverage to a person with a license or identification card that prohibits the purchase of alcoholic beverages.

Section 60-6E-8 is similarly amended so that the director can suspend or revoke the license of or fine a server for selling, serving, or dispensing alcoholic beverages to a person with such a license or identification card.

Sections 66-5-47 and 66-5-405, regarding the content of driver's licenses and identification cards, respectively, are both amended to direct that the license or identification card of a person prohibited as a condition of probation or parole from purchasing alcoholic beverages shall have the appearance similar to the license or card of a person under twenty-one years of age, except that the printed legend shall indicate that the person is prohibited from purchasing alcoholic beverages. Such a person may obtain a license or card without the printed legend when they present to the motor vehicle department (1) a certified court document indicating that the defendant is no longer on probation; (2) a parole discharge certificate; or (3) a certificate of completion from the corrections department.

Section 66-8-102 is amended to indicate that it is unlawful for a person with a driver's license that prohibits the purchase of alcoholic beverages to drive a vehicle in NM if the person has an alcohol concentration of two hundredths or more in the person's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle.

Section 66-8-111 is amended so that the motor vehicle department will revoke the license of a person with such a license who is caught driving with an alcohol concentration of two hundredths or higher. Section 66-8-111.1 is similarly amended so that law enforcement shall serve immediate written notice of revocation and of right to a hearing to a person so charged. Section 66-8-112 is also amended to include the alcohol concentration of a person that has a driver's license prohibiting the purchase of alcoholic beverages as one of the issues that a revocation hearing will determine.

FISCAL IMPLICATIONS

This bill provides for misdemeanor and felony penalties for retailers, retailer's employees, and agents and the resulting new crimes will likely result in an increased caseload and the need for additional FTE's for the Public Defender Department.

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 and commenced prosecutions. 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.

HB 172 could result in the issuance of citations to licensees for violations of the new sections. Fines and penalties could be assessed. The amount of potential revenue is unknown as there is no way to gauge the number of citations issued or the amount of fines that could be imposed.

Staff time for both Alcohol and Gaming and the Department of Public Safety could be impacted by the issuance and adjudication of citations written for violations of the new sections. The number of hearings required would likely increase, possibly necessitating additional hearing officers, but the number of hearings is unknown.

The Adult Parole Board (APB) reports that there may be a minor fiscal impact to the board to provide the appropriate documentation and paper work and to train board members.

The New Mexico Corrections Department (NMCD) reports that the additional felony convictions and misdemeanor convictions (offenders convicted and having to serve two or more misdemeanors consecutively can be sentenced to a NMCD prison) resulting from this bill would increase the Department's costs by leading to minimal to moderate increases to the inmate population and probation/parole caseloads. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the Department's inmate population or probation/parole caseloads. However, it is always difficult to predict or estimate the ultimate effect of any new crime bill with any certainty. As is almost always the case, there is no appropriation in the bill to the Department to cover any of the Department's increased costs associated with the creation of these new crimes.

The contract/private prison annual cost of incarcerating an inmate is \$27,761 per year for males. The cost per client to house a female inmate at a privately operated facility is \$31,600 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,205 per year. The cost per client in Intensive Supervision programs is \$3,848 per year. The cost per client in Community Corrections is \$3,830 per year. The cost per client per year for male and female residential Community Corrections programs is \$25,161.

There may be some minimal increases in the Department's revenue (caused by a minimal amount of revenue generated by the probation/parolee supervision fees paid by offenders convicted of these new crimes during their probation/parole period). However, the minimal increases will be more than offset by one or more offenders sentenced to prison for these new crimes.

SIGNIFICANT ISSUES

Licensees would be required to ask for and be presented with identification each and every time an alcohol purchase is made regardless of age. Alcohol servers would all have to be re-trained to

check IDs not only for underage drinking but also for restricted drivers' licenses. The bill does not address out of state licenses or identification cards.

APB reports that this bill could provide a helpful tool to restrict probationers and parolees from purchasing alcoholic beverages during the pendency of their supervision, when such a restriction is warranted. However, it may be difficult for MVD enforce because of the existence of multiple and sometimes overlapping sentences.

Further, offenders often have multiple convictions for DWI. For example, an offender could discharge from probation for one such crime, but still have a probation and/or parole term left for another DWI; or an offender could be finished with parole for his single DWI conviction, but still have more time to serve on probation for that conviction. It may be easy for some offenders to obtain a regular license by misleading MVD into erroneously believing that they are done with all probation and parole when in fact they are not done with all required supervision. MVD may need to check with the Department to better ascertain exactly what supervision the particular person is under. This would be an administrative burden for both MVD and the Corrections Department.

Additional prohibitions against the consumption or purchase of alcoholic beverages, such as enumerated in HB 172, will further stretch the already strained capabilities of the state's probation department. No allowance is provided in HB 172 for additional personnel or contracted resources to provide the compliance supervision required by the court or parole board ordered prohibition against alcohol purchase or consumption.

As new penalties are enacted, in addition to those already in place regarding liquor sales and drinking and driving, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. These additional costs are not capable of quantification

PERFORMANCE IMPLICATIONS

The courts are participating in performance based budgeting. This bill may impact the courts' performance based budgeting measures, which may result in a need for additional resources. For example, the district court's performance measure clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases

This bill would negatively impact NMCD's ability to perform prison-related and probation/parole supervision services (with current levels of staffing) if there were more than just a few additional convictions.

ADMINISTRATIVE IMPLICATIONS

HB 172, in its amendment to section 31-20-6, directs the court to collect the defendant's driver's license if the court orders that the defendant not purchase or consume alcoholic beverages. Courts do not collect driver's licenses under any current statute and having to do so will create an administrative burden on the courts. A process would have to be developed for the collection and timely forwarding of the license to the motor vehicle division.

There may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

NMCD notes that if there were to be a substantial increase in the inmate population or probation/parole caseloads, it would increase the workloads of current prison and probation/parole staff.

Probation and parole officers and staff will have to enforce an additional condition of probation and parole that requires these offenders to not purchase alcohol and to carry special restrictive driver's license or identification cards. This could lead to more probation and parole violations, and to more offenders being placed in prison for these violations. However, the bill might also reduce new DWI crimes and probation/parole violations by making even more difficult for offenders to be able to purchase alcohol or to drive while intoxicated.

As a general rule, individuals on probation and parole are already prohibited by their standard conditions of supervision from drinking or consuming alcoholic beverages. This law would now prohibit the purchase of such beverages, assuming that that prohibition becomes part of the standard conditions of probation and parole supervision.

TRD acknowledges that the bill presents significant card redesign and production challenges, imposing significant administrative impact. Procedures would need to be developed and implemented for transmittal to MVD of such orders and for taking such administrative action. MVD would have to develop the appropriate card design and systems programming.

MVD anticipates that it will have to redesign the driver's license identification (DLID) card to accommodate the issuance of a special DLID card in the under-21 vertical format with a legend that clearly designates that the person is prohibited from purchasing alcoholic beverages. MVD estimates it will incur a one-time cost of \$100.0 thousand for the DLID card redesign.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 226

TECHNICAL ISSUES

The bill requires sellers and servers to check and verify the identification of all persons attempting to purchase alcoholic beverages. However, because the server is not specifically required to demand a New Mexico Motor Vehicle Division-issued license or ID, an individual may be able to circumvent the prohibition by presenting an alternative photo ID issued by a federal, state, county or municipal government. Additionally, Id cards issued in other states may not have designations required in this bill.

This bill does not specify a fee for issuance of the new driver's license with a legend that prohibits a driver with a suspended or paroled crime from purchasing or consuming alcoholic beverages.

TRD notes that this bill is that it would allow a separate entity (court or parole board) to require reissuance by the Motor Vehicle Division (MVD) of an individual's license or ID with the prohibition and vertical format, effectively placing MVD in the position of enforcing that entity's orders.

OTHER SUBSTANTIVE ISSUES

HB 172 requires a licensee to check the identification card of every person trying to purchase alcohol, not just those who, based on appearance, are suspected of being less than twenty-one years of age. This will involve retraining all licensees, their employees and agents, in order to ensure that everyone's ID was being checked whenever a liquor purchase was involved.

The motor vehicles department indicates that there is insufficient space on driver's licenses to accommodate additional notifications, such as the requirement in HB 172 for a printed legend indicating the person cannot purchase alcoholic beverages. The licenses would require a complete redesign to accommodate such additional language, incurring vendor costs to MVD for the redesign

ALTERNATIVES

Currently, magistrate, metropolitan and district courts may require, as a condition of parole or an order deferring or suspending a sentence (probation), that the defendant refrain from purchasing or consuming alcoholic beverages. All probationers and parolees under the NMCD currently are required to abstain from buying or drinking alcohol as part of the terms of supervision. Violations could send them (back) to prison or subject them to other conditions

AMENDMENTS

Amend the first sentence of the proposed section F of 31-20-6 to read “not purchase or consume alcoholic beverages and *shall* surrender any current driver's license....”

DL/svb