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FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/09

SPONSOR Park LAST UPDATED _____ HB 420

SHORT TITLE Prohibit Minors Under Influence of Alcohol SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Juvenile Parole Board (JPB)
 Department of Health (DOH)
 Public Defender Department (PDD)
 New Mexico Sentencing Commission (NMSC)
 Administrative Office of the Courts (AOC)

No Response Received From

Children, Youth and Families Department

SUMMARY

Synopsis of Bill

House Bill 420 amends Section 60-7B-1 NMSA 1978 to expressly provide that it is a violation of the Liquor Control Act for a minor to be under the influence of alcohol. Failing field sobriety tests constitutes prima facie evidence of being under the influence of alcohol.

Existing penalties set forth in Subsection G of Section 60-7B-1 NMSA 1978 would apply to a minor under the influence of alcohol. In addition, the proposed legislation provides new language, which would apply to all alcohol-related offenses in Section 60-7B-1 NMSA 1978 involving minors. The new language requires the offender to be ordered by the sentencing court to attend, a minimum of 12 hours, an alcohol prevention or early intervention program approved by DOH; and an adjudication of guilt shall not be entered if the offender successfully completes the requirements.

FISCAL IMPLICATIONS

AOC stated there will be 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.

SIGNIFICANT ISSUES

DOH noted the proposed legislation is sponsored by the Attorney General's Office. There are currently no laws prohibiting minors from consuming alcohol. Section 32A-2-3 NMSA 1978 prohibits youth from "buying, attempting to buy, receiving, possessing or being served any alcoholic liquor." However, the statute does not address youth consumption of alcohol or found to be under the influence of alcohol.

DOH states that data from the 2007 Youth Risk and Resiliency Survey shows that underage drinking is a serious problem in New Mexico. In 2007, 42.3 percent of high school students reported past-month drinking, and 27.4 percent of these current drinkers reported past-month binge drinking. Binge drinking is drinking five or more drinks on a single occasion. Drinking, and particularly binge drinking, is strongly associated with a range of other risk behaviors that put students at immediate risk of harm. New Mexico high school students also have the highest rate of early drinking in the nation at 30.7 percent.

DOH stated one of the most effective interventions has been laws to increase the Minimum Legal Drinking Age (MLDA). Increase to the MLDA over the past 25 years have been associated with marked reductions in current and binge drinking among high school students, and substantial reductions in alcohol-related injury and death among adolescents and young adults. MLDA laws prohibiting the purchase and/or possession of alcoholic beverages by minors have been adopted in every state. The federal Center for Disease Control and Prevention Community Guide recently reviewed the evidence for the effectiveness of enforcing laws that prohibits sales to minors and recommended enforcement of these laws as an effective strategy. The alcohol Policy Information System reports that 19 states, including New Mexico, still do not explicitly prohibit consumption by minors. DOH stated the argument made for these laws is that they give law enforcement another important tool for enforcing MLDA.

DOH noted the proposed legislation would add participation in a department approved "alcohol prevention or early intervention" program as a requirement for first-time MLDA laws offenders. The department's Office of Substance Abuse Prevention currently funds 34 community-based programs that provide alcohol prevention and early intervention services to youth throughout the state. In counties without such providers, the local DWI programs funded by the Department of Finance Administration also operate substance abuse prevention and early intervention programs.

DOH reported the stipulation in the proposed legislation regarding "an adjudication of guilt shall not be entered if the offender successfully completes" sanctions may help mitigate the reluctance of some law enforcement officers to charge minors under the current MLDA statute.

PDD reported punishing "being under the influence" is essentially the same as punishing posses-

sion within the body. New Mexico has found that one cannot possess drugs or alcohol in one's body. See *State v. Tywayne H.*, 1997-NMCA-015, ¶ 21, 123 N.M. 42, 933 P.2d 251 (one does not possess alcohol within one's body); and *State v. McCoy*, 116 N.M. 491, 495, 864 P.2d 307, 311 (Ct.App.1993) (presence of drugs in the body does not constitute possession), *rev'd on other grounds sub nom.*, *State v. Hodge*, 118 N.M. 410, 882 P.2d 1 (1994). In *Hodge*, the Supreme Court vacated the defendants' convictions on the charge of possession of a controlled substance where the only evidence of possession was a urinalysis that showed cocaine in the defendants' systems.

NMSC stated a pamphlet published by the New Mexico Attorney General's Office notes that in 2007 New Mexico had the highest rate in the nation for youth drinking alcohol before the age of 13. The following is additional information from the pamphlet:

- 43.2 percent of high school students reported being a current drinker;
- Girls (44.2 percent) and boys (42 percent) had similar rates of current drinking;
- 30.7 percent of high school students had their first drink before the age of 13, the highest rate in the nation;
- Liquor was the type of alcohol most frequently consumed, followed by beer and malt liquor; and
- Young people who begin drinking before the age of 15 are five times more likely to develop alcohol dependence than those who begin drinking at 21.

JPB stated the proposed legislation would not only hold juveniles accountable for delinquent behavior, but it would also encourage them to attend a prevention program which would allow them to have a learning experience and keep their record clean.

AOC stated there is the possibility of more cases being filed in Children's Court under this new violation, which would require more court resources.

PERFORMANCE IMPLICATIONS

DOH stated the proposed legislation relates to the New Mexico 2008 Comprehensive Strategic Health Plan: Promote Behavioral Health Strategy goal – "State Government should support rigorous statewide prevention and youth development initiatives that reduce underage and binge drinking, and drinking and driving.

PDD stated its caseloads might be impacted as the State seeks findings of delinquency on more children. Because of current case law, these cases would probably be litigated to trial and beyond.

AOC noted the proposed legislation may have an impact on the following performance measures for the districts courts: cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

DOH stated the proposed legislation will presumably require the department's Office of Substance Abuse Prevention to approve "alcohol prevention and early intervention programs for first-time offenders. The administrative impact of this role is unclear.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 420 has a relationship with Senate Bill 111.

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