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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/14

SPONSOR Rehm **LAST UPDATED** _____ **HB** 196

SHORT TITLE Minors Interfering With DWI Interlocks **SB** _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Attorney General’s Office (AGO)
 Department of Public Safety (DPS)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 196 cleans up Section 66-5-504 NMSA 1978, adds notwithstanding language, and adds a new subsection which creates a specific new criminal offense and penalty: “A parent or legal guardian who is issued an ignition interlock license and who knowingly and deliberately causes the parent’s or legal guardian’s minor child to tamper or interfere with the proper and intended operation of an ignition interlock device shall be subject to the penalties for driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act as proved in Section 66-5-39.1, NMSA 1978.”

The new offense as created by the new subsection would carry the following penalty under current law:

1. The person shall be punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars (\$300) and not more than one thousand dollars (\$1,000) and the fine and imprisonment shall not be suspended, deferred or taken under advisement pursuant to Section 66-5-39.1 NMSA 1978.

2. The motor vehicle the person was driving shall be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle pursuant to Section 66-5-39.1 NMSA 1978.

FISCAL IMPLICATIONS

Increased penalties could also generate more litigation which would require more resources for prosecutors, defendants' attorneys and the courts. 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.

SIGNIFICANT ISSUES

Existing language in Subsection B of Section 66-5-504 NMSA 1978 provides penalties when a person...."causes another to tamper or interfere with the proper and intended operation of an ignition interlock device..." The penalties provided for in Subsection B are discretionary. The penalties provided for in the proposed Subsection C are mandatory.

The New Mexico Sentencing Commission stated that a review of New Mexico crime data shows that since 2008 criminal charges filed pursuant to Section 66-5-504 NMSA 1978 have occurred infrequently.

TECHNICAL ISSUES

The AODA provided the following analysis:

It is unclear what is meant by someone who would "...interfere with the proper and intended operation of an ignition interlock device," and whether that would require them to try and block it mechanically. The terms "interfere," "proper" and "intended use" are subject to interpretation. It might be possible to have someone who has not consumed alcohol operate the device to start the vehicle or when otherwise prompted, so whether that would be deemed to be interfering with the "proper and intended operation" could be an issue. The bill proposes no change for having someone else operate the ignition interlock device.

The bill does not propose any change in the law for a driver using an interlock license who causes a minor who is not related to the driver tamper or interfere with the proper operation of the interlock device. If someone who has a minor, related or not, tamper or interfere with an ignition interlock and is charged with the felony of contributing to delinquency of a minor (See, Sections 30-6-3 and 32A-2-3, NMSA 1978) then they could argue that the more specific ignition interlock tampering crime should apply, and it would have lesser penalties than the felony.