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FISCAL IMPACT REPORT

SPONSOR HJC **ORIGINAL DATE** 02/23/15 **86 & 131/HJCS**
LAST UPDATED 03/19/15 **HB** a/SPAC
SHORT TITLE DWI Interlock Removal Requirements **SB** _____
ANALYST Daly / Sanogo

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	(\$137.0)	(\$137.0)	Recurring	Indigent Device Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files
 Administrative Office of the Courts (AOC)
 Law Offices of the Public Defender (PDD)
 Department of Public Safety (DPS)
 Attorney General's Office (AGO)
 Administrative Office of the District Attorneys (AODA)
 Taxation & Revenue Department (TRD)
 Department of Finance & Administration (DFA)
 Department of Health (DOH)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of SPAC Amendment:

The Senate Public Affairs Committee amends the proposed legislation to reflect that license revocation would now depend on both the number of DWI convictions as well as the driver's breath or blood alcohol concentration, according to the table, below:

Mandatory Revocation of License by Division

Section 66-5-29 NMSA 1978

Current		Proposed		
Offense No.		Offense No.	BAC (%)	
			< 0.24	> 0.24
1	1 Year	1	1 Year	2 Years
2	2 Years	2	2 Years	4 Years
3	3 Years	3	3 Years	Life
4+	Life	4+	Life	Life

Synopsis of Original Bill:

The House Judiciary Committee (HJC) substitute for HB 86 & 131 upgrades penalties for driving while under the influence of intoxicating liquor or drugs (DWI). Substantive changes include:

- License revocation would now depend on both the number of DWI convictions as well as the driver’s breath or blood alcohol concentration (see table, next page):

Mandatory Revocation of License by Division

Section 66-5-29 NMSA 1978

Current		Proposed			
Offense No.		Offense No.	BAC (%)		
			< 0.16	0.16-0.24	>0.24
1	1 Year	1	1 Year	2 Years	4 Years
2	2 Years	2	2 Years	4 Years	Life
3	3 Years	3	3 Years	Life	Life
4+	Life	4+	Life	Life	Life

- A person who refuses a BAC test is assumed to have a BAC of 0.16 in determining interlock requirement period
- A person who has not installed an interlock device is required to participate in a court-approved sobriety monitoring program, violations of which could lead to jail time; and the period of probation following a first DWI conviction is extended from up to one year to up to four years
- The bill would also increase the requirements for removing an ignition interlock device and the reinstatement of a driver's license (amends Section 66-5-33.1 NMSA 1978):
 1. No more than two interlock tests recording an alcohol concentration exceeding 0.05 during the prior six months, and
 2. At least one test recorded per week during the prior six months. An exemption shall be provided upon proof that the vehicle with the interlock device was not available during a week when a test would have been required.
- Where house arrest has been ordered for incarceration sentences, the bill would require the installation of a home breathalyzer device and allow an electronic monitoring device for the offender (amending Section 66-8-102 NMSA 1978). The offender shall pay the costs associated with the house arrest program unless deemed to be indigent. Section 3 of the proposed bill would extend \$30.00 monthly from the interlock device fund to non-indigent offenders required to use a home breathalyzer device.

FISCAL IMPLICATIONS

The proposed legislation would impose an estimated \$137 thousand recurring revenue impact on the indigent device fund.

According to the citation tracking system of the Taxation and Revenue Department (TRD), there were over 9,700 DWI convictions in 2012, with 34 percent of these convictions yielding jail sentences. In 2011, the traffic safety division of the Department of Transportation (DOT) reported that 40 percent of interlock installations were eligible for benefits from the indigent device fund. Jail sentences that are served in community custody programs (CCP) and house arrest are assumed to occur at a 30 percent rate, below:

9,700 DWI convictions will yield 3,200 incarceration sentences, yielding 960 house arrests, of which, 380 will be eligible for benefits from the indigent device fund. At \$30 per month for at least six months (twelve is assumed), the indigent device fund will disburse \$137 thousand per fiscal year.

Furthermore, the Administrative Office of the Courts (AOC) reports that any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. Increased penalties cases take up a considerable amount of judicial time, as defendants choose to retain attorneys and demand jury trials, leading to an increase in the amount of work that needs to be done by the courts, thus requiring additional resources to handle the increase. In addition to the courts, increased budgetary impact may be anticipated in district attorney, public defenders and corrections budgets, although at this time they are unquantifiable.

SIGNIFICANT ISSUES

AGO comments that the bill addresses a significant loophole in existing law—DWI offenders who do not install ignition interlocks yet continue to drive—by requiring sobriety monitoring and maintenance for the same period as the installation of an ignition interlock device is required. However, it raises two issues as to alternative prosecution theories of DWI and the conclusive presumption established in this bill, which:

relies on the breath or blood alcohol concentration level for a DWI conviction. It thus excludes a DWI conviction based on the slightest degree of impairment theory of DWI or a conviction for being under the influence of any drug; in either instance an offense under the Motor Vehicle Code has occurred but a breath or blood alcohol concentration level is not available. See Section 66-8-102, NMSA 1978.

This bill also adds a conclusive presumption that a breath or blood alcohol concentration is 0.16 when the offender refuses to submit to testing. Conclusive presumptions are disfavored in criminal law. Rule 11-302 NMRA (presumptions in criminal cases); State v. Trossman, 2009-NMSC-034, ¶ 11, 146 N.M. 462, 212 P.3d 350.

This conclusive presumption raises another issue, as DOH points out:

A person who refuses to submit to BAC testing is assumed to have a BAC of 0.16 for the purposes of determining length of time an interlock is required to be installed. This presumption may encourage more offenders who are very intoxicated to refuse BAC

testing because an interlock would be required for a shorter period of time if the offender refuses BAC testing then if the offender submitted to testing and the resulting BAC was at or above 0.24.

Additionally, TRD addresses two implementation concerns:

[The] sobriety monitoring program as a substitute for an interlock device will lead to confusion because a person might attend the program and not have an interlock device as part of the criminal case, but when the person attempts to reinstate the license, MVD will require the person to obtain an interlock license and device for six months pursuant to another existing law. See Section 66-5-33.1, NMSA 1978.

[Furthermore,] amending the mandatory revocation periods based upon a person's alcohol concentration and prior DWI convictions will be difficult for MVD to implement because the courts are not required to report a person's alcohol concentration as part of the information it submits on a DWI conviction. MVD cannot rely on the alcohol concentration provided on the Implied Consent side of the incident as many times a plea deal will reduce an aggravated charge (BAC 0.16 or greater) down to a simple DWI charge (BAC less than 0.16).

The Law Offices of the Public Defender (PDD) noted that it is unclear how the courts will respond to the use of interlock results to enforce penalties developed by the traffic safety bureau.

According to the agency, because such devices are not certified by the scientific laboratory division of the Department of Health (DOH), device results are not “admissible or sufficiently reliable to be used in criminal court proceedings.”

PDD also reported that house arrest may prove to be “an attractive option for the sentencing courts” as an alternative to jail, citing the economic effects of disemployment while an offender is incarcerated and the strain on overcrowded jails. However, the agency also submitted its concern that,

The present unavailability of CCP [and house arrest] in a number of counties statewide presents an inequality of treatment of DWI offenders where terms of incarceration are ordered.

ADMINISTRATIVE IMPLICATIONS

The bill proposes that the installation and use of home breathalyzers shall occur “pursuant to rules adopted by the [traffic safety] bureau.” The Department of Finance and Administration (DFA) finds, however, that the bill neither identifies the agency responsible for purchasing and installing the home breathalyzers, nor does it provide funding for bureau staff.

OTHER SUBSTANTIVE ISSUES

DOH reports that the required use of ignition interlock devices have resulted in a 67 percent median decrease in re-arrest rates among those convicted of DWI. The agency asserts that a more stringent and sustained use of interlock devices among DWI offenders could have a substantial impact on alcohol-related crashes in the state.

The NM Corrections Department (NMCD) reports that on average, approximately fifty percent of all offenders in its care and custody for DWI are remanded for more than two previous convictions. Given the apparent level of predatory DWI offending and alcohol addiction in our state, extension of community correctional safeguards aimed at not only protecting the public but also incentivizing sobriety may reasonably be considered to have positive impacts upon both public safety and DWI recidivism.

AIS/MD/je/aml/bb