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FISCAL IMPACT REPORT

ORIGINAL DATE 3/2/15

SPONSOR Pacheco LAST UPDATED _____ HB 565

SHORT TITLE DWI with Revoked License Penalties SB _____

ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 30, HB 86, HB 131, HB 355, HB 359, HB 404, HB 530, SB 499 and SB 511

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 Taxation and Revenue Department (TRD)
 Public Defender Department (PDD)
 Department of Health (DOH)
 Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 565 proposes to add a new section to the Motor Vehicle Code adding a fourth degree felony for driving under the influence of intoxication liquor or drugs if the person’s driving privileges are revoked or suspended or violates the Implied Consent Act or if the person is subsequently convicted. The bill also proposes to add the charge of “party to a crime” if a person authorizes or knowingly permits a person’s whose driving privileges are revoked to drive a motor vehicle either owned or under the permitting person’s control.

FISCAL IMPLICATIONS

PDD states that creating a new fourth degree felony offense to be charged, in addition to the full misdemeanor offense of “Driving while license suspended ” or “Driving while license revoked”, means more litigation to prevent an accused from being convicted of a felony when these cases

are charged, and its more serious implications upon the defendant—more trials and more appeals will result, with more persons incarcerated in the Corrections Department, all at more cost to the PDD, the state, and the courts.

According to the AOC, with the increase in penalties and the potential for person who permits another who is charged with DWI under the terms of the bill to be themselves charged with being a party to a crime, there may be the incentive for those charged with these crimes to go to trial. Cost to the courts would likely increase in the form of additional procedures and jury costs. The size of the increase is unknown.

SIGNIFICANT ISSUES

PDD offers that following:

Punishing an unauthorized driver with a fourth degree felony as well as the full misdemeanor “Driving while license suspended” will inordinately weigh against indigent defendants, since a suspended license often result from not having paid some fee or fine.

A fourth degree felony conviction is particularly serious and implicates due process concerns when the unauthorized driver need not actually have had the license revoked as a result of a DWI conviction but only been unsuccessful at an MVD administrative hearing, *and* need not actually be convicted of having driven while intoxicated when the license was suspended or revoked, but merely was unsuccessful at an MVD administrative hearing. A person could be convicted of a fourth degree felony without ever being previously convicted of any offense—but simply having twice lost in matters brought before an MVD hearing officer when DWI, even only a first offense, was suspected. The penalty seems inordinate when compared to having been actually convicted of a fourth DWI, which also is penalized as a fourth degree felony.

Punishing with a full misdemeanor the person who permits the unauthorized driving even when the person does not actually know that the unauthorized driver’s license was revoked *and* that it was revoked for DWI increases the number of defendants to be charged, and can result in a misdemeanor conviction for an act of simple negligence, not criminal negligence, a grave constitutional concern.

The DOH offers the following

Alcohol-related motor vehicle traffic crash deaths have decreased in the past decade (nmhealth.org/publication/view/data/474/). However, drivers who are convicted of DWI continue to have a large impact on the safety of other highway users in New Mexico. In 2013, 93 people were killed in alcohol-impaired driving crashes, accounting for one third of all traffic-related deaths in New Mexico (www-nrd.nhtsa.dot.gov/Pubs/812102.pdf). Nationally, alcohol-impaired drivers in fatal crashes were six times more likely to have a prior DWI conviction than drivers in fatal crashes with no alcohol (www-nrd.nhtsa.dot.gov/Pubs/812102.pdf).

According to the New Mexico DWI Citation Tracking System, of the 7,677 people screened and convicted of DWI offenses in 2013, 4,306 (56.1%) were convicted for the first time (nmhealth.org/publication/view/data/1478/).

Although DWI offenders with interlocks installed have a substantially lower risk for recidivism (re-offense) than DWI offenders who have had their licenses suspended (www.thecommunityguide.org/mvoi/AID/ignitioninterlocks.html), there is evidence that license suspension is effective in reducing recidivism (Nichols JL & Ross H. The effectiveness of legal sanctions in dealing with drinking drivers. *Alcohol Drugs Driving* 1990; 6(2): 33-60). However, there are also reports that indicate that many of these drivers convicted of DWI continue to drive after their license has been revoked (ntl.bts.gov/lib/26000/26000/26079/DOT-HS-809-491.pdf). According to the Department of Public Safety, a DWI offender would currently be charged with a fourth degree after a 4th offense and driving on a license revoked for DWI is a misdemeanor (www.dps.state.nm.us/index.php/dwi-prevention/dwi-penalties/). If HB 565 is enacted, a DWI offender could potentially be convicted of a fourth degree felony on their second offense, as DWI offenders may have their licenses suspended after a first offense in New Mexico. Felony charges often result in increased jail penalties and fines.

The available health research suggests that increasing jail penalties do not have clearly demonstrable deterrent effects or prevent deaths from alcohol-related motor vehicle crashes. An assessment of first-offense mandatory DWI fine and jail penalties across the 48 contiguous U.S. states concluded that there may be a possible effect of mandatory fine policies in some states, but little effect of mandatory jail policies. (Wagenaar AC, et al. General deterrence effects of U.S. statutory DUI fine and jail penalties: long-term follow-up in 32 states. *Accid Anal Prev.* 2007; 39(5): 982-94). This researcher also noted that among twenty studies that have assessed effects of jail penalties on traffic fatalities and DWI recidivism, only two studies have found significant effects of the implementation of jail penalties on traffic fatalities. This was similar to the conclusions of two previously published research reviews as well (Wagenaar, AC, et al. Methods used in studies of drink-drive control efforts: a meta-analysis of the literature from 1960 to 1991. *Accid Anal Prev.* 1995; 27, 307-316 and Zobeck, TS, & Williams, GD. Evaluation synthesis of the impacts of DWI laws and enforcement methods: final report, 1994 Report No.:ADM281 89 0002, NIAAA).

The impact on health of policies that penalize a person for knowingly authorizing use of their motor vehicle to another whose license has been revoked or who has been arrested of DWI is not well researched. However, the DWI sentencing guidelines published by the National Highway Traffic Safety Administration and the National Institute on Alcohol Abuse and Alcoholism notes that a weakness to vehicle impoundment, forfeiture, and other vehicle-based sanctions (p. 12) is that the offender may borrow, rent, or steal a different vehicle (pubs.niaaa.nih.gov/publications/SentencingDWI/A_Guide2.pdf).

According to the AGO, Section 66-5-39 (driving while license suspended) contains no enhancement for a subsequent DWI violation while driving with a suspended license. Section 66-5-39.1(B) (driving while license revoked) stipulates that if the privilege to drive was revoked for DWI and the person is subsequently convicted under this section, a penalty of imprisonment for a minimum of 7 days and a minimum \$300 fine will be imposed. HB 565 Section 1 includes the possibility of a person committing a DWI while that person's license was suspended or revoked for DWI. Under current law, that person would either face no enhancement under 66-5-39 or face the same enhancement under 66-5-39.1(B) as a person convicted pursuant to that statute for a non-DWI offense.

PERFORMANCE IMPLICATIONS

One of NMDOT's safety goals is to reduce motor vehicle related DWI crashes, injuries and deaths. Increasing penalties for repeat DWI offenders may have a positive impact on NMDOT's safety goal.

ADMINISTRATIVE IMPLICATIONS

AOC reports that raising the driving while revoked charge to a felony takes it out of magistrate jurisdiction and shifts administrative costs and other burdens to the district courts.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 30 proposes for that a printed legend be placed on the driver's license of a person whose license is revoked for driving under the influence, or for violation of the Implied Consent Act, indicating that the person is prohibited from purchasing alcoholic beverages.

HB 86 proposes to increase the requirements to be met for removal of an ignition interlock device before reinstatement of a driver's license.

HB 131 would amend Section 66-5-29 NMSA 1978 so that the amount of time that a person's driver's license is revoked for driving under the influence would depend on the person's blood or breath alcohol concentration (BAC) and number of offenses instead of the number of offenses alone.

HB 355 proposes to strike the definition of aggravated driving under the influence, increasing the penalty for a first time offense to 30 days in a treatment or detention facility, increasing the penalty for multiple offenses.

HB 359 proposes to increase penalties for fourth and subsequent DWI offenses.

HB 404 proposes to amend Section 66-5-5 NMSA 1978 Subsection E to exclude offenders who have only one DWI conviction from another jurisdiction (i.e. another state, District of Columbia, or other governmental subdivision) from New Mexico's ignition interlock requirement, provided that the person presents proof that they completed all conditions of their sentence for the conviction.

HB 530 would permit the issuance of an ignition interlock license based on pending revocation of a person's driver's license and permit the issuance of a card for the period of one year, two years or three years.

SB 499 proposes to add a new section to Chapter 66, Article 8 NMSA 1978 which would establish the crime of driving while intoxicated (DWI) with a minor (a person under the age of 18) as a misdemeanor.

SB 511 proposes to change the level of alcohol for which driver's licenses are administratively revoked for people under age 21 from a blood alcohol content (BAC) of .02 to "any detectable alcohol".

TECHNICAL ISSUES

AOC points out that the bill still leaves the language of 66-5-39.1B intact. This appears to be in conflict with the proposed new section 66-5-39.2.

OTHER SUBSTANTIVE ISSUES

According to PDD, the new Section 66-5-39.2 would make it a fourth degree felony, subject to eighteen months' imprisonment, if a person is convicted of driving on license suspended or revoked due to DWI or violation of the Implied Consent Act *and* convicted of DWI (liquor or drugs) while driving on the suspended or revoked license.

The AGO provides the following statutory interpretation. Currently, Section 66-5-39 (driving while license suspended) contains no enhancement for a subsequent DWI violation while driving with a suspended license. Section 66-5-39.1(B) (driving while license revoked) stipulates that if the privilege to drive was revoked for DWI and the person is subsequently convicted under this section, a penalty of imprisonment for a minimum of 7 days and a minimum \$300 fine will be imposed. Proposed Section 1 of HB 565 captures the possibility of a person committing a DWI while that person's license was suspended or revoked for DWI. Under current legislation, that person would either face no enhancement under 66-5-39 or face the same enhancement under 66-5-39.1(B) as a person convicted pursuant to that statute for a non-DWI offense.

ABS/bb