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FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/09
LAST UPDATED 02/26/09 **HB** 596/aHJC

SPONSOR Campos

SHORT TITLE DWI Offender Sobriety Monitoring Devices **SB**

ANALYST Weber

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$52.3	\$52.3	Recurring	DWI Interlock Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate But Substantial	Indeterminate But Substantial	Indeterminate But Substantial	Recurring	DWI Interlock Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of House Judiciary Amendment to House Bill 596

1. On page 12, line 8, strike “or” and insert in lieu thereof “and”.
2. On page 12, line 12, strike “or” and insert in lieu thereof “and”.
3. On page 12, line 24, strike “or” and insert in lieu thereof “and”.
4. On page 13, line 5, strike “or” and insert in lieu thereof “and”.

These changes clarify that a person required to use a sobriety monitoring device must also pay the associated fee to the Interlock Device Fund administered by the NMDOT.

Persons determined indigent by the court must only pay half of the interlock or sobriety monitoring fees. Currently, those persons declared indigent but without an automobile can be waived from the interlock requirement with no resulting payments required. However, availability of the sobriety devices may encourage their use for those persons without an automobile but convicted under this statute as an alternative to the interlock. This will have the effect of increasing the number of indigents for which the fund pays one-half of the costs. This situation is complicated by the fact that the sobriety devices are considerably more expensive and cost between \$5 and \$15 per day which translate to \$900 to \$2,700 annually. Presently, NMDOT reports approximately 8,000 interlocks are installed with 3,000 declared indigent. NMDOT further notes that by the end of FY09 the cash balance may decline from \$1.1 million to approximately \$500 thousand. This trend would necessitate an accelerated revenue source to maintain its solvency.

Synopsis of Original Bill

House Bill 596 amends Section 66-8-102 to allow the court to require an offender convicted pursuant to this section to obtain and use an electronic sobriety monitoring device, as a condition of probation. The device will be one available in that jurisdiction and approved by the court, and the offender shall pay all costs associated with the device unless the offender is determined by the court to be indigent.

The bill also amends Section 66-8-102.3 regarding the “interlock device fund.” By this bill, as is already the case for an offender required to operate a vehicle with an ignition interlock device, an offender using a sobriety monitoring device will have to pay a fee between \$50 and \$100 to the vendor of the device, who shall remit the collected fees on a quarterly basis to be deposited into that fund. Further, the interlock device fund can be used to cover the costs of installing and removing and one-half the cost of leasing sobriety monitoring devices for indigent offenders.

FISCAL IMPLICATIONS

NMDOT reports that the agency administers the interlock device fund pursuant to NMSA 1978, Section 66-8-102.3. This fund covers the cost of installing and removing, and one-half the cost of leasing, an ignition interlock system for indigent people who are required by law to have such devices installed in their vehicles. The bill allows an indigent offender who is required to obtain an electronic sobriety monitoring device to access the interlock device fund to cover the costs of that device. The current balance of the interlock device fund is approximately \$800,000.00. Over the last 18 months, the fund balance has been steadily decreasing as more and more indigent clients are accessing the fund. Since status of indigency is determined by the courts and is handled on a case by case basis, it is difficult to determine with certainty how this bill would impact the fund. However, based on the most recent fund history and the trend of increased indigent clients, it will likely have a negative impact on the fund. In addition, although it is not clear how much an electronic sobriety monitoring device will cost, preliminary cost estimates gathered by the Traffic Safety Bureau of the NMDOT indicate that an electronic sobriety monitoring device will be more expensive than an ignition interlock device. Accordingly, although the indigent payouts from the fund for an electronic sobriety monitoring device will be higher, the bill includes no additional revenue to offset those additional costs to the interlock device fund. Therefore, it is very likely there will be a negative impact on the interlock device fund and its solvency threatened.

NMDOT continues that pursuant to NMSA 1978, Section 66-8-102, convicted DWI offenders are currently required to install an ignition interlock device on any vehicle they drive. Based on the number of DWI arrests per year compared to the number of interlocks installed per year, only 32% of all persons arrested for DWI are installing an interlock (Source: Traffic Safety Bureau, NMDOT). It is believed that, a majority of the remaining 68% of convicted DWI offenders are signing an affidavit with the court stating that they do not own or have access to a motor vehicle and are therefore avoiding the cost and inconvenience of an ignition interlock device. Because the current law and practice provides this loophole, the indigent members of this group who sign the affidavit do not access and deplete the interlock device fund. (DWI offenders who avoid the ignition interlock requirement can get their license reinstated after simply waiting out their revocation period.) HB 596 will require these offenders to obtain an electronic sobriety monitoring device and, therefore, administration and fiscal maintenance of the interlock device fund will be negatively impacted.

TRD notes that in FY08, the Administrative Office of the Courts reported 6,964 cases where a DWI interlock device was ordered. However, the Court doesn't keep records of affidavits for DWI offenders that claimed not to have a vehicle, which would allow them to sidestep the requirement. MVD estimates 10% (697) of the 6,964 court order cases for DWI interlock devices supplied a "no car" affidavit.

Fees collected for the proposed electronic sobriety monitoring device range between \$50 and \$100 per year. The fees go to the DWI Interlock Fund and are appropriated to the Traffic Safety Bureau of the Department of Transportation. Estimated new revenue is detailed below and is the source of the revenue estimate noted in the REVENUE section:

697 Electronic Monitoring Devices x \$75 average Interlock fee assessment/year = \$52.3 DWI Interlock Fees

However, NMCD offers information regarding the possibility of increased operating expenses related to the additional sobriety device. Since the bill does not require the Corrections Department to lease or purchase the devices at its expense, there is no direct fiscal impact to the Department. However, the monitor devices will probably result in more probation violations (since using alcohol is prohibited as a standard condition of probation) and perhaps in more probationers being revoked and sent to prison. Since a technical violation (such as use of alcohol, not meeting with the probation officer as scheduled, etc.) does not usually result in the offender being sent to prison unless there are repeated and numerous technical violations, there will probably only be a minimal number of offenders sent to prison because of this bill. Thus, the bill is likely to result in a minimal increase in the Department's prison population.

The majority of misdemeanor DWI offenders are not supervised by the Corrections Department while on probation. Only upon a fourth DWI conviction does a DWI constitute a felony under current law. Sentencing judges can send offenders with a felony DWI conviction to a Department prison, or place them on probation. Those DWI offenders with less than four DWI convictions may not have anyone (such as a probation or parole officer) to monitor their devices or tell the court whenever the offender's device indicates that the offender is drinking. If the courts were to suddenly place every DWI misdemeanor offender on probation (which the Department would likely have to legally challenge), the Department simply does not have the manpower or resources to supervise a large number of misdemeanor offenders or misdemeanor DWI offenders. This bill would have a substantial fiscal impact on the Department if it resulted in judges placing or trying to place every misdemeanor DWI offender on supervised probation.

SIGNIFICANT ISSUES

The AOC offer similar information. Similar to the administrative burden related to monitoring ignition interlock devices, there are limited resources around the state for oversight of electronic sobriety monitoring devices. The courts, Corrections Department, and county DWI programs lack the staff and resources to provide the comprehensive monitoring necessary to full oversight of court-mandated ignition interlock devices. Personnel need to be trained and available to respond to any reports of alcohol use by an offender wearing an electronic sobriety monitoring device. HB 596 does not address the issue of who will be responsible for ensuring such electronic sobriety monitoring devices are installed and maintained, nor how such staff will be provided and funded.

POSSIBLE QUESTIONS

What is the purpose of this electronic sobriety device, just to determine if a person has been using alcohol?

MW/svb