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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/09

SPONSOR Cravens LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Home Breathalyzer For Certain DWI Convicts SB 308

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|---------------|------|-------------------------|------------------|
| FY09          | FY10 |                         |                  |
|               | NFI  |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

**Conflicts with,**  
HB 172 in that it amends Section 66-8-102.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY09  | FY10  | FY11  | 3 Year<br>Total Cost | Recurring<br>or Non-Rec | Fund<br>Affected |
|--------------|-------|-------|-------|----------------------|-------------------------|------------------|
| <b>Total</b> | \$0.1 | \$0.1 | \$0.1 |                      | Recurring               | General<br>Fund  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Bernalillo County Metropolitan Court (BCMC)

Public Defender (PD)

Department of Corrections (DOC)

### SUMMARY

#### Synopsis of Bill

NMSA 1978, Section 66-8-102 sets forth the penalties for driving while under the influence of alcohol or drugs, including the requirement that individuals convicted under this section must install an ignition interlock device in their car. The period of time the offender must maintain the ignition interlock depends upon whether it is the offender's first, second, third, or fourth conviction.

SB 308 adds an alternative requirement for offenders who state under oath that they do not own a car. For these offenders, a new proposed subsection of Section 66-8-102 requires that a “home breathalyzer” be obtained and that the court order the offender to produce morning and evening breath samples. The offender must employ the home breathalyzer for the same period as an interlock: first offense, one year; second offense, two years; third offense, three years; fourth offense, for the remainder of the offender’s life.

The offender must bear the cost of the home breathalyzer, unless the court determines that the offender is indigent.

## **FISCAL IMPLICATIONS**

According to the AOC, full implementation of SB 308 will require the expenditure of significant resources. Ensuring that home breathalyzers have been installed and that offenders comply with the requirement to produce two samples daily will require the involvement of compliance monitors. The courts do not have the resources necessary to monitor offender compliance with the requirement to purchase and install a home breathalyzer device, and the courts do not have resources available to implement programs to store, analyze, or otherwise process the data recorded by the home breathalyzer.

The Bernalillo County Metropolitan Court projects that passage of this bill would require additional supervision of approximately 1,600 individuals a year by the Bernalillo County Metropolitan Court’s Probation Division. This increase would require approximately 8 to 10 additional probation officers. No appropriations are identified to offset this cost.

## **SIGNIFICANT ISSUES**

According to the AOC, an effective home breathalyzer program will require regular monitoring to ensure compliance, and additional court resources in enforcing court orders against offenders who fail to comply with the requirements. As discussed in Fiscal Implications, the courts do not have the resources to monitor the many offenders anticipated to be affected by this requirement.

At present, many counties have a misdemeanor county compliance officer, or some degree of monitoring by the adult probation office (APPO). County compliance officers are funded by the local DWI grant program, approved by the Department of Finance and Administration. Probation officer resources are already stretched thin. According to a 2008 report to the Legislature of an Interagency Task Force studying the need for probation services in the magistrate court, APPO estimates that current probation and parole officer caseloads (124 cases) are far higher than both the national average, and nationally accepted standards (75-80 cases). *Report to the Legislature concerning House Memorial 12, 2008*. The Task Force report also concluded that “It is obviously beyond the reach of the state’s budget for the foreseeable future to expand APPO services to magistrate courts to any great extent.”

## **ADMINISTRATIVE IMPLICATIONS**

There would likely be an administrative impact on the courts as a result of an increase in caseload and the need to develop the capacity to process compliance information.

**CONFLICT**

Conflicts with HB 172 in that it amends Section 66-8-102.

**OTHER SUBSTANTIVE ISSUES**

According to the Public Defender, passage of this bill will likely affect indigent offenders to a greater degree than the non-indigent. As a result, there will be significant demand on the ignition interlock fund, pursuant to 66-8-102.3(C) NMSA, to cover the costs of installing and removing, and one-half of the cost of leasing – the home breathalyzer.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

**POSSIBLE QUESTIONS**

According to the Department of Corrections, the bill appears to require those DWI convicted offenders who do not have access to motor vehicles to nevertheless utilize home breathalyzers. It is unclear what is intended to happen if such an offender blows positive on his home breathalyzer but is at home and not driving a motor vehicle—is this intended to be a violation of the law? Is the bill attempting to criminalize drinking alcohol at home? Are those DWI offenders with interlock devices on their motor vehicles legally permitted to drink at home, while those DWI offenders who do not own or have access to motor vehicles are not legally permitted to drink at home? The bill amends the driving while intoxicated law, but seems to be trying to criminalize drinking at home when done by a DWI offender with no vehicle. The bill's purpose is confusing and unclear.

DWI offenders on probation and parole are already prohibited by their standard conditions of supervision from drinking alcohol. However, DWI offenders who are not on probation or parole and who do not own or have access to a motor vehicle are not normally prohibited from drinking alcohol in the privacy of their homes. This bill would appear to change that.

CS/svb