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FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/16

SPONSOR Garcia Richard **LAST UPDATED** _____ **HB** 74

SHORT TITLE DWI Tests, Penalties & License Revocation **SB** _____

ANALYST Malone

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 44, HB 81, HB 82, and SB 118.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
 Administrative Hearings Office (AHO)
 Attorney General’s Office (AGO)
 Department of Public Safety (DPS)
 Department of Transportation (DOT)
 Law Offices of the Public Defender (LOPD)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 74 updates the penalties for convicted DWI offenders. License revocation and the interlock requirement will be based on a driver’s breath or blood alcohol concentration (“BAC”) and the number of prior DWI convictions. A person who refuses a BAC test will be determined to have a 0.24 BAC. An adult whose test results are unavailable will be determined to have a BAC below 0.24; a juvenile whose test results are unavailable will be determined to have a BAC below 0.16. The new requirements for license revocation and ignition interlock are as follows:

- One year for a first conviction with a blood alcohol concentration below 0.24;
- Two years for a first conviction with a blood alcohol concentration of 0.24 or greater;
- Two years for a second conviction with a blood alcohol concentration below 0.24;
- Four years for a second conviction with a blood alcohol concentration of 0.24 or greater;

- Three years for a third conviction with a blood alcohol concentration below 0.24;
- For the remainder of the offender's life for a third conviction with a blood alcohol concentration of 0.24 or greater, subject to a five-year review; and
- For the remainder of the offender's life for a fourth or subsequent conviction, subject to a five-year review.

The requirements for removing an interlock device and reinstatement of a license will be based on the following: no more than two failed interlock tests that record an alcohol concentration over 0.05 during the prior 6 months; and evidence of twenty-two ignition interlock tests during those six months, at least one week apart. There are exemptions if the vehicle or the person to be tested is not available for a test.

A person who does not install an interlock device shall be required to participate in court-approved sobriety monitoring for the same time period as the ignition interlock requirement or until court supervision expires. This sobriety program may include an in-home monitoring device. Failure to comply with the program requirements or to maintain sobriety shall result in jail terms of 48 hours for each failure. The court may suspend the sobriety program if the offender installs an interlock, with credit for the time in the sobriety program applied towards the interlock requirement. The offender shall pay the costs associated with the sobriety program unless the offender is deemed indigent.

When house arrest is required, HB 74 will require the installation of a home breathalyzer device and permit use of an electronic monitoring device for the offender. The offender would have to pay the costs associated with the house arrest program unless deemed indigent. HB 74 would allow a \$30.00 monthly subsidy from the interlock device fund for indigent offenders using a home breathalyzer device.

FISCAL IMPLICATIONS

No fiscal impact.

SIGNIFICANT ISSUES

DOT reports that New Mexico has been identified as a national leader in the use and administration of ignition interlock devices as a tool to combat DWI. In FY15, approximately 12 thousand ignition interlock devices were installed. The same year, 2,048 applications were approved for utilization of the Ignition Interlock Device Fund, and DOT paid approximately \$325 thousand from the fund for eligible participants.

A 2010 report by the National Highway Traffic Safety Administration entitled *Key Features for Ignition Interlock Programs* evaluated ignition interlock programs in the United States, and highlighted programs and features believed to best serve traffic safety interests. Compliance-based removal was identified as key in reinstatement of an offender's license. The report likewise recommended that offenders demonstrate (i) no alcohol-related lockouts, and (ii) continued vehicle use during the final three to six months of the interlock period prior to license reinstatement.

PERFORMANCE IMPLICATIONS

Heightened standards for compliance-based removal could increase the number of interlocked vehicles, further protecting New Mexico citizens from drunk driving.

ADMINISTRATIVE IMPLICATIONS

LOPD anticipates that it is likely more defendants will opt to “roll the dice” and go to trial rather than plead guilty because of these increased penalties, which would increase the workload for trial attorneys and support staff in both LOPD and offices of the district attorneys. While LOPD would likely be able to absorb some cases under the proposed law, any increase in the number of trials brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

TRD anticipates that implementation of this bill will have a minimal impact on the IT division and only take about three weeks to complete, test, and implement changes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 44, HB 81, HB 82, and SB 118.

TECHNICAL ISSUES

DOT notes that the bill does not include a fee for a home breathalyzer device as now required for an ignition interlock device, or state how an offender would pay such a fee if it were included. Additionally, while the bill provides assistance for indigent individuals to acquire both ignition interlock devices and home breathalyzer devices using the interlock device fund, the bill does not include assistance for the costs associated with an electronic monitoring device.

AODA expresses concerns that the bill could delete any license revocation and interlock requirements for persons convicted of DWI while under the influence of drugs since all of the changes specify they would apply if the offender had alcohol in their breath or blood, and delete the time periods provided for any type of DWI conviction now present. It is conceivable that someone could be convicted of DWI for driving while under the influence of drugs. See, Sect. 66-8-102(B), NMSA 1978 (“It is unlawful for a person who is under the influence of any drug to a degree that renders them incapable of safely driving a vehicle to drive a vehicle within this state.”) If they had a BAC test that showed no alcohol their license probably could not be suspended and they could not be required to comply with the ignition interlock and/or court-monitored sobriety requirements.

AGO notes that “house arrest” should be defined. The office also expresses concern about allowing electronic monitoring rather than requiring it, as most house arrest programs do.

TRD notes the following technical issues:

- The proposed amendments to Section 66-5-29(C) NMSA 1978 on pp. 8-10, do not give MVD any authority to revoke a license when a person is convicted of DWI based on a refusal to submit to chemical testing.

- Page 25 lines 1-6, provide that a person on a sobriety monitoring system be given credit toward time required under Section 66-5-33.1 NMSA 1978. A regulation will need to be prepared to articulate what documents are necessary to obtain credit.
- Page 27 lines 19-20, the current law imposes a fee for an interlock device OR a home breathalyzer device. MVD collects a fee when someone obtains an interlock license but has no means to collect a fee for a person with a home device. The bill should be amended to impose that requirement on the entity that leases the home devices.
- Given that MVD doesn't always receive the citation from the officer, the bill could be amended to require that all courts include the blood alcohol content of an offender in the documentation that's submitted to MVD. Ignition interlock vendors may also need to update the programming on their devices to ensure that drivers with high breath violations on their interlock devices are consistently identified.

AMENDMENTS

DOT suggests the following two amendments:

- Changing the wording “no alcohol measurements of five one hundredths or more recorded by the ignition interlock device” found at what would be NMSA 1978, § 66-5-33.1(B)(5) to “the driver has failed an initial breath test six (6) times within a period of three (3) hours, or the driver has failed initial breath tests or random retests ten (10) times within a period of thirty (30) days.” (wording taken from 18.20.11.10 (U)(2) and (3) NMAC.)
- Adding at the conclusion of the first sentence of what would be NMSA 1978, § 66-5-33.1(B)(6) “, provided active usage is verified.”

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