

MVD shall revoke or deny the offender's driver's licenses or driving privileges. The offender shall be allowed to apply for an ignition interlock license.

Penalties

HB 502 establishes a new penalty schedule for DWI convictions as follows:

First conviction:

Imprisonment for not less than 30 days and not more than 364 days (not less than 60 days for aggravated DWI)
Fine of not less than \$1,000 and not more than \$2,500
Community service of not less than 120 hours.

Second conviction:

Imprisonment for not less than 90 days and not more than 364 days (not less than 180 days for aggravated DWI)
Fine of not less than \$2,000 and not more than \$2,500
Community service of not less than 168 hours

Third or subsequent convictions:

Third degree felony
Imprisonment of 3 years, 2 of which shall not be suspended

Treatment and Screening Programs

All DWI offenders, regardless of which offense, shall be required to participate in and complete an approved alcohol or drug abuse screening program and, if necessary, an approved treatment program. This requirement shall not be suspended, deferred or taken under advisement. (This requirement is in current law as well).

In addition, all DWI offenders shall be required to participate in and complete:

- (1) not less than a twenty-eight-day inpatient, residential or in-custody substance abuse treatment program approved by the court;
- (2) not less than a ninety-day outpatient treatment program approved by the court;
- (3) a drug court program approved by the court; or
- (4) any other substance abuse treatment program approved by the court.

This requirement shall not be suspended, deferred or taken under advisement. (Under current law, this is a requirement only for a second or third conviction.)

Upon a felony conviction the corrections department shall provide substance abuse counseling and treatment to the offender in its custody. While the offender is on probation or parole under its supervision, the corrections department shall also provide substance abuse counseling and treatment to the offender or shall require the offender to obtain substance abuse counseling and treatment.

Vehicle Impoundment

For a first or second conviction, the vehicle driven by the offender at the time of the offense shall be impounded or immobilized for 60 days.

For a third conviction, the vehicle driven by the offender at the time of the offense shall be impounded or immobilized for 120 days.

The bill makes an exception to this provision if the impoundment would pose an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle.

Concurrent Jurisdiction

The magistrate court shall continue to have concurrent jurisdiction with the district courts for first and second offenses, but shall not have concurrent jurisdiction for third offenses.

PERFORMANCE IMPLICATIONS

Both the Department of Transportation and the Department of Public Safety have performance measures related to reducing alcohol-related accidents, injuries and fatalities. To the extent that enhanced penalties prevent recidivism and/or serve as a deterrent, this bill could help the departments improve on their performance measures.

FISCAL IMPLICATIONS

This bill will result in significant cost increases to the state. Increasing the severity of DWI offenses will result in fewer people pleading guilty, thereby requiring more jury trials.

Longer sentences will increase the population in state prison facilities. It will also increase the caseload for the Corrections Department's probation division.

The bill's requirements that all felony convicts receive drug/alcohol treatment provided by the Corrections Department will require the department to significantly expand its programs. The department will be unable to control the growth of the programs as growth will be dictated by the number of persons convicted of third or subsequent offenses. The department currently operates treatment programs but they are not mandatory. In addition, persons on probation or parole will be required to participate in treatment programs, which will result in significant costs to the Corrections Department

The requirement that the courts provide proof of conviction within 24 hours to the MVD will increase administrative costs to the courts.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Numerous bills have been introduced to combat New Mexico's DWI problem, including several that would amend the same sections proposed for amendment by House Bill 502. These bills include House Bills 282, 472, 493, 494, and 506 and Senate Bills 154, 187, 581, and 587.

These bills propose, among other changes, amendments to license revocation provisions, ignition interlock device requirements, community service requirements, and jail time provisions.

OTHER SUBSTANTIVE ISSUES

PDD raises the concern that the bill's provisions regarding mandatory license revocation and ve-

hicle impoundment violate due process.

PDD writes:

“Due process requires notice and an opportunity for a hearing before the State can suspend or revoke a person's driver's license. *State v. Herrera*, 111 N.M. 560, 562, 807 P.2d 744, 746 (Ct. App. 1991); *Maso v. State Taxation & Revenue Dep't*, 2004-NMSC-28, ¶10 (N.M., 2004). Nor can the State take property without due process even temporarily. *See In re Comm'n Investigation*, 1999-NMSC-16, ¶ 24, 127 N.M. 254 ("the fact that the deprivation of property . . . may be only interim or temporary in nature does not provide a justification for bypassing the Due Process Clause").”

In addition, the impound requirement provides an exception if the impoundment would create a risk to the healthy, safety or employment of the offender’s family or the family of the owner of the vehicle. However, this exception does not protect the health, safety or employment of the offender or the owner of the vehicle.

AOC also raises concerns with the impoundment provisions, noting that there is no guidance as to who will make the decision as to whether health, safety or employment is sufficiently impacted, how the decision is to be made, or under what timeframe.

DOT notes that the bill eliminates the mandate for ignition interlock devices through the court system. Statistics show that a low percentage of people will voluntarily install the ignition interlock device, even if an ignition interlock license is the only available license. DOT anticipates that the bill could result in fewer people using the ignition interlock devices.

POSSIBLE QUESTIONS

Does House Bill 502 violate due process by requiring the immediate revocation of an offender’s driver’s license?

Does House bill 502 violate due process of vehicle owners who have not committed DWI by requiring impoundment?

Does House Bill 502 jeopardize the health, safety or employment of offenders and of vehicle owners by requiring vehicle impoundment?

Will House Bill 502 create unsustainable growth in the Corrections Department’s treatment programs?

Will House Bill 502 undermine the effectiveness of court-ordered ignition interlock device requirements?

EF/yr