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## FISCAL IMPACT REPORT

**SPONSOR** Griego **ORIGINAL DATE** 1/30/07  
**LAST UPDATED** 2/14/07 **HB** \_\_\_\_\_  
**SHORT TITLE** Sobriety Monitors for Certain DWI Offenders **SB** 438/aSPAC  
**ANALYST** C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)  
 New Mexico Corrections Department (NMCD)  
 New Mexico Department of Transportation (NMDOT)

### SUMMARY

#### Synopsis of Amendment

The Senate Public Affairs Committee amendment makes technical changes to the amendment. It strikes “electronic sobriety device” from the entire bill.

#### Synopsis of Original Bill

Senate Bill 438 amends Section 66-8-102 NMSA 1978, which deals with penalties for driving under the influence of intoxicating liquor or drugs. SB 438 adds the condition whereby an offender who states under oath that he or she neither owns nor has access to a motor vehicle must obtain and use an electronic sobriety monitoring device approved by the court. The frequency of use would be specified by the court for the length of time specified under Sections N and O of the statute:

- A period of one year, for a first offender;
- A period of two years, for a second conviction;
- A period of three years, for a third conviction;
- The remainder of the offender’s life, for a fourth or subsequent conviction

Five years from the date of conviction and every five years thereafter, a fourth or subsequent offender may apply to the district court for removal of the device.

### **FISCAL IMPLICATIONS**

There are significant costs associated with electronic sobriety monitoring devices. Depending on the type and brand of the device itself, purchase costs range upward from \$1600. In addition, there are monitoring costs for each day the device is in use by an offender, and daily monitoring costs can run \$5 or more dollars a day. If the device is leased, the purchase price is bypassed but the daily fee can be \$12 or higher. At the lease rate, a first offender required by the court to use the device every day for the full year of their sentence would incur charges totaling over \$4300, and possibly much higher. There can also be significant training and installation fees associated with such devices. There is no appropriation in the bill, nor any indication who would be responsible for the costs associated with the use of such an electronic sobriety monitoring device.

### **SIGNIFICANT ISSUES**

If the bill's intent is to have the defendant pay for the device, there is no provision concerning indigent defendants.

### **ADMINISTRATIVE IMPLICATIONS**

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. SB 438 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.

### **OTHER SUBSTANTIVE ISSUES**

The NMDOT Traffic Safety Bureau is statutorily responsible for administering the ignition interlock program for the State of New Mexico. Approximately half of all convicted DWI offenders do not get the device installed due to a self-reported lack of an owned or eligible vehicle.

It is being reported that many DWI offenders sell their vehicle to a friend/family member or transfer the title to a friend/family member after arrest to avoid the ignition interlock sanction. This allows the DWI offender to claim that "they do not own or have a car" to which they could install the interlock.

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

Individuals who have been convicted for DWI, who do not install Ignition Interlock devices because they do not have an available vehicle, have no mandated preventative, prohibitive or evaluative measures to insure compliance or prevent another DWI occurrence.