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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/6/08  
 SPONSOR SCORC LAST UPDATED 2/13/08 HB \_\_\_\_\_  
 SHORT TITLE Alternate DWI Sentencing SB 565/SCORCS/aSJC  
 ANALYST Cox/Moser

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$00.1 see analysis	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts – AOC

Administrative Office of DAs – AODA

Public Defenders – PDD

### SUMMARY

#### Synopsis of SJC Amendment

**Senate Judiciary Committee Amendment to Senate Bill 565 provides that alcohol monitoring bracelets may be required in addition to a vehicle ignition interlock rather than be offered as an alternative to the vehicle ignition interlock. Additionally, the Amendment provides that “all costs associated with having a secured continuous remote alcohol monitoring bracelet will be paid for by the offender.”**

#### Synopsis of Bill

Committee Substitute for Senate Bill 565 provides that an alcohol monitoring (scram) bracelet may be worn as an alternative to vehicle ignition interlock following conviction for DWI.

This Committee Substitute Bill contemplates amending NMSA 1978, Section 66-8-102, dealing with DWI, adding alcohol monitoring bracelet ‘language’.

## FISCAL IMPLICATIONS

There may be significant costs associated with manpower, vehicles, monitoring equipment and personnel. These costs would be incurred when an individual infraction occurs, necessitating a DWI violation ‘pick-up’. This may be especially noteworthy for rural New Mexico areas that have limited law enforcement personnel.

AOC notes:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law, court installation and monitoring of bracelets, and appeals from sentencing. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. Additionally, the sanction of wearing a bracelet may cause accused persons to invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. These additional costs are not capable of quantification.

## SIGNIFICANT ISSUES

AODA states:

- A secured continuous remote alcohol monitoring (SCRAM) bracelet is an electronic monitoring device which is fastened securely (locked) around the offender’s ankle, and which monitors the offender for alcohol use. If the sensor detects alcohol in the offender’s body, or if it detects tampering with the contact between the offender and the bracelet, a signal is sent electronically to a central location and a report is generated regarding the alcohol use or tampering. That report is then forwarded to the agency or court which is supervising the offender’s probation.
- SB 565 would permit the court to order an offender to wear a SCRAM bracelet AS AN ALTERNATIVE, or in the place of, an ignition interlock device.
- The two technologies are entirely separate. The ignition interlock works by disabling the offender’s vehicle unless an alcohol-free sample is blown into the device. Thus, when it is working properly and not defeated by use of a non-intoxicated “substitute blower,” the ignition interlock PREVENTS VEHICLE OPERATION of the vehicle on which it is installed. It does not prevent “substitute blowing,” nor does it prevent operation of other vehicles by the offender.
- The SCRAM bracelet is securely attached to the offender, not to the vehicle, and monitors the offender continuously for alcohol use. However, IT WILL NOT PREVENT VEHICLE OPERATION, it will only report that the offender is using alcohol. While this will undoubtedly result in detection of many more probation violations than are currently observed, and will probably result in many more probation revocation proceedings, conceivably with more incarceration of offenders, this only occurs after the fact. The SCRAM device does not prevent the offender from starting a vehicle and driving in an intoxicated condition. It will, however, detect the alcohol usage. So, for example, an offender who would defeat an ignition interlock by use of a “substitute blower” will be reported to have used alcohol, but may still be able to operate a vehicle.

- While the SCRAM bracelet would be a very useful adjunct technology to monitor probation compliance, until technology is in place for the SCRAM device to actually prevent vehicle operation upon detection of alcohol usage, it is not an appropriate alternative or replacement for the ignition interlock device, because IT DOES NOT PREVENT THE OFFENDER FROM DRIVING WHILE INTOXICATED. (Capital Lettering added by AODA)

AOC notes:

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 provide 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.

PDD notes:

The science behind the bracelet has not peer-reviewed so it may not pass a Daubert/Alberico challenge. There are reports of false positives from exposure to chemicals.

PRC/mt