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FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/10

SPONSOR Cravens **LAST UPDATED** _____ **HB** _____

SHORT TITLE Prohibit Intoxication By People Under 21 **SB** 172

ANALYST Wilson

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$1.0-\$10.0	\$1.0-\$10.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$500.0- \$1,000.0	\$500.0- \$1,000.0		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Children, Youth & Families (CYFD)
 Department of Health (DOH)
 Department of Public Safety (DPS)
 Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

Senate Bill 172 makes it a violation of the Liquor Control Act for a minor to buy, attempt to buy, receive, possess or permit himself to be served with alcoholic beverages. SB172 adds a new offense to the Liquor Control Act by prohibiting intoxication by persons under age 21.

Minors who violate the new provisions of the Act are required to attend an alcohol prevention or early intervention program for a minimum of 12 hours. Also, there are civil penalties that will suspend the driver's license for 30 days for a first offense and 90 days for the second offense. In addition, starting with the second offense, there is a \$1,000 fine or in lieu of the fine, there can be a community service of 40 hours. For a third and subsequent offense, the license can be suspended for up to two years and there is a fine of \$1,000.00 or 60 hours of community service.

Finally, if a youth does not yet have their driver's license, they will have to wait additional time for eligibility for licensure.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. 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.

Any additional caseloads for the affected agencies at a time when budgets are being cut may make it difficult to achieve the intent of this legislation with existing or fewer resources.

SIGNIFICANT ISSUES

According to CYFD this bill closes a loophole in existing law. Under current statute, a minor can be charged with buying, attempting to buy, receiving, possessing or being served alcohol, but cannot be penalized for "being intoxicated." This bill will allow for penalties for minors who are found to be intoxicated.

New Mexico has a high rate of substance abuse related problems among youth; among states participating in the 2007 National Youth Risk and Resiliency Survey, New Mexico consistently had several of the highest rates of drug and alcohol use among youth, including the highest rate of youth who drank alcohol before age 13, and the highest rate of youth who drank alcohol on school property. In almost all indicators of substance use problems, including episodic heavy drinking, New Mexico ranks higher than the national average.

Substance abuse related arrests are also common among juveniles involved in the justice system in New Mexico. Some of the most frequent charges of youth in the juvenile justice system are for driving while impaired, and possessing alcohol or drugs. During FY07, 7% of the New Mexico juvenile population was referred for delinquency; of those referred, 31% – approximately 2% of the state's under-18 population – were involved with alcohol or substance abuse.

During FY08, possession of alcoholic beverages by a minor was the 6th most frequently referred offense to CYFD for intervention and the 5th most frequent charge for a youth found to be delinquent.

The New Mexico Department of Health’s Healthy Choices, Healthy Students, New Mexico High School Results - Alcohol Use and Related Behaviors, 2007 report shows the following:

- 43.2% of 9th–12th graders were current drinkers.
- 30.7% had their first drink before age 13
- 27.4% were binge drinkers. Binge drinkers were more likely than others to:
- drive when they had been drinking z
- ride in a car with a driver who had been drinking
- smoke cigarettes
- use illegal drugs such as marijuana and cocaine
- be involved in physical fights

According to DOH the direct costs to New Mexico of underage drinking were estimated in 2005 to be \$243 million as a result of youth violence, traffic accidents, high-risk sexual behavior, property crime, and other problems.

SB172 does not include provisions for the distribution of fines collected as a result of enactment of this bill, nor does it include a definition of intoxication or mechanisms for assessing it in minors; thereby making it difficult to enforce and adjudicate.

AODA states since the bill specifically excludes those who violate its provisions from criminal consequences, the criminal and juvenile justice system will apparently not be involved in monitoring or enforcement of the law. A delinquent act is defined as any act that is designated as a crime for an adult, and a case does not get into the delinquency side of Children's Court unless there is an allegation that a delinquent act has been committed. Note that it is already against the law, and a delinquent act, for a minor to possess alcohol.

ADMINISTRATIVE IMPLICATIONS

The agencies affected by this bill will be required to handle the provisions of this bill with existing staff as part of ongoing responsibilities, but without additional staff.

OTHER SUBSTANTIVE ISSUES

Minimum Legal Drinking Age (MLDA) laws that prohibit consumption by minors, or that make internal possession illegal, are not common. Only 8 states explicitly make internal possession as assessed by blood, breath, or urine tests illegal. An unknown number of states punish persons under the age of 21 for displaying indicators of consumption or for exhibiting the effects’ of having consumed alcohol without specifically testing for alcohol.

POSSIBLE QUESTIONS

The AODA provided the following questions:

1. What is the definition of intoxicated? That seems to be left completely undefined, and could be a rich source of litigation. Even if defined, how is it determined? If by breath or blood test who administers and pays? At whose request? If the meaning of intoxicated is not tied to some objective measure, there could be vagueness issues with the bill.

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2. Who is responsible for implementing, enforcing, and monitoring the provisions of the law?
3. What are the consequences of noncompliance with the penalties provided for those violating this law?

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