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FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/11

SPONSOR Cravens LAST UPDATED _____ HB _____

SHORT TITLE Home Breathalyzer for Certain DWI Offenders SB 306

ANALYST Wilson

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|--------------------------------|-------------------------|------------------|
| FY11 | FY12 | | |
| | NFI See Fiscal Implications | | |

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 3, SB 127, SB 197, SB 307, SB 308 and HB 49

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Corrections Department (CD)
 Department of Public Safety (DPS)
 Department of Transportation (DOT)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 306 amends Section 66-8-102 NMSA 1978 so that a DWI offender who states under oath that he or she does not have a motor vehicle or access to one for the purpose of installing an ignition interlock shall instead be ordered to install a home breathalyzer device that identifies the person providing the sample, and provide a morning and evening breath sample, for the period of time that they would have had to have an ignition interlock installed. The offender shall pay all costs associated with the device unless the offender is determined by the court to be indigent.

SB 306 also amends Section 66-8-102.3 to include home breathalyzer devices alongside ignition interlock devices as covered by the Interlock Device Fund (Fund), further specifying that the fund can pay up to \$30 monthly toward the lease of a home breathalyzer device for an indigent offender.

FISCAL IMPLICATIONS

There are costs associated with home breathalyzer devices but they are not more than the costs of installing and monitoring an ignition interlock device, so there is little disparity in cost between the two types of court ordered sanctions. SB 306 also expands the use of the interlock device fund so that it can be used to help defray such costs for indigent offenders.

The Fund receives \$300,000 from the Liquor Excise Fund and \$50 to \$100 per DWI conviction. This is insufficient to make the Fund solvent.

DOT's Traffic Safety Bureau (TSB) administers the Fund pursuant to NMSA 1978, Section 66-8-102.3. This Fund covers up to \$50 for the cost of installing, up to \$50 for the cost of removing and up to \$30 for verified active usage of the interlock device for indigent people who are required by law to have such devices installed in their vehicles. Responsibility for evaluating indigency changed in FY11 to the TSB. Although indigent payouts from the Fund for an electronic sobriety monitoring device will increase the overall payouts, the bill includes no additional revenue to offset those additional costs to the Fund.

According to DOT and the AOC the Fund actually ran out of money in FY10 due to the number of offenders ordered to install ignition interlocks who were also deemed indigent by the courts. This fiscal year the fund has already been frozen.

This bill will have no fiscal impact since the Fund cannot meet current needs. Ordering the use of home breathalyzer devices for those who swear under oath that they neither own nor have access to a motor vehicle will further threaten the solvency of that Fund. None of the agencies contacted could even estimate the funding needed to adequately run this program

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 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. The AOC is currently working on possible parameters to measure the resulting case increase.

SIGNIFICANT ISSUES

Convicted DWI offenders currently are required to have an ignition interlock device installed on any vehicle driven by the offender. Approximately 32% of all persons arrested for DWI are installing an interlock based on the number of DWI arrests per year compared to the number of interlocks installed per year. A large percentage of convicted DWI offenders sign an affidavit with the court stating that they will not drive or do not have a vehicle.

The ignition interlock device is designed to prevent an intoxicated person from starting and operating a motor vehicle. The sobriety monitoring device does not prevent a drunk driver from operating a vehicle.

Ensuring that home breathalyzer devices have been installed and that offenders comply with their use will require the involvement of compliance monitors. The courts do not have the resources necessary to monitor offender compliance with the requirement to purchase and install such devices, and the courts do not have resources available to implement programs to store, analyze, or otherwise process the data recorded by the home breathalyzer devices.

The courts, CD, 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 using a home breathalyzer device.

The PDD provided the following:

The proposed amendment not only increases administrative costs to the criminal justice system, but is also duplicative of the penalties that judges may already impose on those convicted of DWI. It is also confusing and unclear in its scope. Judges typically require intensive drug and alcohol counseling and regular drug and alcohol testing for individuals on probation. A judge may order intensive supervised probation, such as community custody program, which requires a person be placed under house arrest, wear an ankle bracelet and monitored by regular and random drug and alcohol tests which may, if not already incorporated, include monitoring by a home breathalyzer. On the other end of the spectrum, a person may be placed on unsupervised probation after a long record of demonstrated good behavior. Nonetheless, the mandatory requirement of a home breathalyzer will eliminate the possibility of any unsupervised probation for those who still have to use an ignition interlock. .

The state has a strong interest in preventing DWIs. However, it is not against the law to drink alcohol in most non-driving contexts. It is difficult to gauge how mandating a home breathalyzer would provide a cost-effective deterrence against drunk driving. If a person does not have a car, and does not drive, and is not otherwise prohibited, i.e., as a condition of probation, from using alcohol, then a mandatory home breathalyzer imposes additional penalties on that person and increases administrative costs without an actual violation of the law. On the other hand, for those with scant resources for acquiring a used/new car and installing an ignition interlock, there could be a temptation to opt for a home breathalyzer and take one's chances if and when pressed to drive.

The proposed amendment is also too broad and vague. If a person must temporarily leave the state for work, family emergencies, military service or other reasons, how can that person be monitored on a home breathalyzer? The motor vehicle division will, in certain situations, allow for reinstatement of a driver's license upon proof of driving with an ignition interlock for six months. If a person must pay for a home breathalyzer while not using a car, it will invariably cut into his/her financial ability to save and pay for an ignition interlock. The amendment does not provide any credit for the use of a home breathalyzer.

The mandatory home breathalyzer has a disproportionate impact on those with limited finances and who are indigent. Having a car for most people is necessity in order to hold down a job and manage one's life. The law already requires forfeiture of the cars of persons who are arrested for DWI. Judges already have the discretion to order regular drug tests as part of strict probation. Mandating a home breathalyzer for all cases not only removes discretion from the judges to fashion appropriate sentences are tailored to a person's history and specific problems, but also increases the administrative and litigation costs in the criminal justice system and increases the costs to the Indigency Fund.

DOT offered the following:

Section 66-5-33.1, NMSA 1978 provides that a convicted DWI offender is required to prove a minimum of six months with an interlock with no attempts to tamper or circumvent the device in order to be eligible for license reinstatement.

Offenders who utilize a home breath device will still be required to have an interlock device prior to license reinstatement.

CD noted the following:

Requiring the devices will promote accountability and personal responsibility for those DWI offenders who claim under oath that they have no access to motor vehicles. The bill does not amend relevant probation, parole and deferred or suspended sentence provisions in the law to allow the use of these devices, but it seems likely that at least some offenders on probation or parole will have to utilize and pay for these devices as a condition of supervision.

ADMINISTRATIVE IMPLICATIONS

TSB administers the Interlock Device Fund. No more than 10% of the money in the Fund in any fiscal year shall be expended for the purpose of the administering the Fund per statute. TSB is currently able to fund one employee to administer the Fund. If passed, SB 306 would result in an increased number of individuals who access the fund, and therefore result in additional processing of indigent applications and indigent reimbursements.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 306 relates to:

- SB 3, Blood Tests for Intoxication and Drugs
- SB 127, Prohibit Certain DWI Plea Agreements
- SB 197, Use of Electronic Sobriety Monitoring Devices
- SB 307, Seizure of Vehicle for Certain DWI Offenders
- SB 308, Interlock Regulations for DWI Offenders
- HB 49, DWI as Drugs in Blood & Interlock for Alcohol

TECHNICAL ISSUES

The short title misspells breathalyzer.

OTHER SUBSTANTIVE ISSUES

The National Highway Traffic Safety Administration (NHTSA) sponsored an evaluation of the New Mexico ignition interlock program. The report was released in 2010. According to the report, the statewide installation rate for interlocks was at 49%, which leaves over 50% of convicted offenders without an interlock. One portion of the study evaluated a strong mandate in Santa Fe County during a 2-year period where an alternative sanction to interlock was required for offenders who did not want an interlock or claimed no plan to drive. Santa Fe county courts received a 71% installation rate during a 2-year period by offering an alternative to the installation of an interlock for those who claimed “no vehicle” or “not driving”.

The NHTSA report states that applying pressure on offenders to install interlocks by threatening a less desirable sanction might result in interlock installation by offenders would be less likely to install them.

POSSIBLE QUESTIONS

What happens now when the court orders a breathalyzer or an ignition interlock for an indigent offender and there is no money in the Fund?

DW/svb