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## FISCAL IMPACT REPORT

SPONSOR King & Harden ORIGINAL DATE 02/02/12  
LAST UPDATED \_\_\_\_\_ HB 211  
SHORT TITLE Prohibit Intoxication for People Under 21 SB \_\_\_\_\_  
ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Children, Youth & Families Department (CYFD)  
Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

House Bill 211 amends subsection C of Section 60-7B-1 NMSA 1978 of the Liquor Control Act to make it a criminal offense for a minor to be in a visibly intoxicated condition, and also amends the penalty for minors who are first time offenders. .

The bill changes the penalties for a first offender of this crime in the following ways:

- 1) a \$1000 fine is deleted;
- 2) community service may include attending a victim impact panel;
- 3) the offender's driver's license shall be suspended for a period of 60 days. If the minor is too young to have a driver's license at the time of the violation, then 60 days will be added to the date that the minor would otherwise become eligible to obtain a driver's license;
- 4) mandatory attendance at an alcohol prevention or early intervention program of a minimum of 8 hours and up to 16 hours in length.

If the offender successfully completes these requirements, an adjudication of guilt will not be entered and the offender will be discharged and the charges dismissed which can only occur once

with respect to any person. This will not be deemed a conviction.

### **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 the number of petitions filed. 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.

### **SIGNIFICANT ISSUES**

This bill adds visible intoxication to a list of prohibited conduct by minors under the Liquor Control Act. The bill defines intoxicated to mean the impairment of a person's mental and physical faculties as a result of alcoholic beverage use so as to substantially diminish that person's ability to think and act in a manner in which an ordinarily prudent person, in full possession of the person's faculties, will think and act under like circumstances. Possession means to be in actual physical control. This definition means that consumption of alcohol does not constitute possession of alcohol, and if consumption by a minor is not followed by subsequent visible intoxication, the activity is not a violation of the Liquor Control Act and therefore not a delinquent offense under the Children's Code.

According to the AOC the bill essentially requires the judge to sentence a first offender of a violation of the Liquor Control Act in a way that keeps a conviction off that person's record with no adjudication of guilt. This invades the province of judicial discretion. A judge may have a case where the circumstances require a different type of sentence, i.e. offender has a prior DWI conviction followed by a first violation of the Liquor Control Act. This will not be allowed under HB 211.

### **ADMINISTRATIVE IMPLICATIONS**

The agencies affected by this bill can handle its requirements as part of on-going responsibilities.

### **TECHNICAL ISSUES**

CYFD notes that the referencing mandatory penalties for an offender implies this part of the law will only impact persons ages 18, 19, and 20. Clarification on this matter is necessary to ensure the referral for minors less than 18 years of age are handled at the discretion of the juvenile probation officer in compliance with Section 32A-2-7 NMSA 1978, as amended.

### **OTHER SUBSTANTIVE ISSUES**

Underage drinking is a significant issue in New Mexico. In 2009, the Substance Abuse and Mental Health Services Administration (SAMHSA) reported that 28.3% of youth 12 to 20 years of age reported to alcohol use within the past month, and 18.8% of that population reported to binge alcohol use. This bill appears to support a focus on early intervention for minors with a first offense. New Mexico Department of Transportation's Traffic Safety Bureau, and the Institute of Public Law University of New Mexico School of Law published information in 2008 that young people who begin drinking before age 15 are five times as likely to develop alcohol

dependence and over twice as likely to become abusers of alcohol as those who begin drinking at age 21.

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