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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/12

SPONSOR Crook LAST UPDATED _____ HB 320

SHORT TITLE DWI Probation and Interlocks SB _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI*	NFI*	NFI*		

(Parenthesis () Indicate Expenditure Decreases)

* The NMDOT already complies with the statutory change.

Relates to SB71, SB135 and SB178

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 New Mexico Department of Transportation (NMDOT)

SUMMARY

Synopsis of Bill

House Bill 320 would amend Section 66-8-102 NMSA 1978, Driving under the influence of intoxicating liquor or drugs. The bill adds the requirement that an offender convicted of a first, second or third driving under the influence will be placed on probation for the entire time that offender is ordered to obtain an ignition interlock license and an ignition interlock device. Additionally, the offender will be required to stay in contact with the ignition interlock provider. The effective date of the bill in July 1, 2012.

FISCAL IMPLICATIONS

According to the New Mexico Corrections Department (NMCD), this bill could result in a significant number of new offenders being placed on supervised probation with the NMCD. The NMCD already supervises approximately 16,000 offenders on probation or parole, and currently has an approximate 20 percent vacancy rate. Current probation and parole officers (PPOs) already have average caseloads of over 100 offenders. Further increasing the probation

caseloads of the NMCD PPOs could negatively fiscally impact the NMCD. There is no appropriation to cover the costs of the supervision. The cost per client in Probation and Parole for a standard supervision program is \$2,608 per year. The cost per client in Intensive Supervision programs is \$1,068 per year. The cost per client in Community Corrections is \$5,524 per year. The cost per client per year for female residential Community Corrections programs is \$39,149 and for males is \$16,805.

According to the AOC, 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 Public Defender Department (PDD) reports in its response that requiring a set time of probation for first, second and third DWI's removes the length of probation from a sentencing court's discretion. It will increase costs of probation, increase probation revocation proceedings and attendant costs, and, perhaps increase the length of time a DWI offender serves in jail. Requiring regular contact with the interlock provider as a condition of probation increases the necessary bureaucratic paperwork and processes to be followed by the provider, a cost that will be passed on to the consumer—the individual offender and the Interlock Fund.

SIGNIFICANT ISSUES

According to the PDD, removing a sentencing court's discretion as to the length of probation precludes a court from individualizing the rehabilitative program for a particular offender. It removes from a court the power to factor in any consideration the risks posed by, and the financial burden placed upon, a particular offender in ordering a term of probation. With mandatory times and no court discretion, the purpose of probation shifts from being a rehabilitative device and towards being a punitive portion of the sentence. Removal of this discretion from sentencing courts will more seriously impact those less able to pay the costs of probation. Lengthened times on probation will correspondingly increase probation revocation actions, placing an increased burden on the courts, the PDD, and perhaps on District Attorney Offices and jails.

The AOC states in its response that currently judges have discretion as to how much time a DWI offender must spend on probation based on the facts of the case and the circumstances of the offender. For a first DWI, the court has discretion of up to one year and for second DWI and third up to five years. This bill takes away the discretion of the court and makes a minimum mandatory probationary period.

The Department of Transportation (NMDOT) reports that in 2008 there were 8,655 first-time DWI convictions; 2,644 second DWI convictions and 1,040 third DWI convictions according to Motor Vehicle Division driver history files. The NMDOT - Traffic Safety Division has statutory oversight of ignition interlock providers statewide. The NMDOT regulations require an ignition interlock device to be serviced and calibrated at least every 60 days. The NMDOT regulations also require interlock providers to maintain records for a 3-year period on every driver, including service and calibration records; driver usage; success or failure of each attempt to start, retest, tamper, avoid test; and any attempts to circumvent the device. Interlock providers are currently required to make all records available to appropriate authorities, including the sentencing court; an assigned probation officer; NMDOT; the Taxation and Revenue Department Motor Vehicle Division; and/or the New Mexico Department of Finance and Administration.

PERFORMANCE IMPLICATIONS

The AOC report that courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

The NMCD reports that this bill will negatively impact its ability to perform probation--related services (with current levels of staffing) only if it causes significant increases to the NMCD's probation caseloads. Only if the bill substantially increased the probation supervision caseloads would it increase the workloads of PPOs at current staffing levels. This bill, if it were to substantially increase the probation caseloads, could make it difficult for existing levels of PPOs to have enough time or resources to adequately perform their jobs.

Currently Section 31-21-13.1 NMSA 1978, Intensive Supervision Program, requires that the NMCD promulgate rules and regulations to provide that the officers providing these services have a maximum case load of twenty offenders and to provide for offender selection and other criteria. If this bill increases the officers' caseload and Senate Bill 162 is not enacted into law, the NMCD would be in violation of the law.

RELATIONSHIP

Relates to SB 71, SB 135, and SB 178.

TECHNICAL ISSUES

According to the AOC, this bill conflicts with the sentencing portions of Section 66-8-102E and F, NMSA 1978. Section E states that the sentence for a DWI 1st is up to 90 days incarceration and if any of the sentence is suspended or deferred, the period of probation may be extended beyond 90 days, not to exceed one year. This sentencing option gives a broad range of discretion to the court. This section would have to be amended to provide for a minimum mandatory probationary period of one year. In the case of the DWI 1st it would also be the maximum probationary period.

POSSIBLE QUESTIONS

The AOC asks: what occurs when the judge gives a sentence of 90 days incarceration on a DWI 1st, not suspending or deferring. There is no basis for and the judge has no authority to place an offender on probation if the entire sentence is imprisonment. Section 31-20-5 NMSA 1978 states that probation is mandatory only when the court has deferred or suspended the sentence? Or for a second and third DWI in Section F of 66-8-102 where the basic sentence is up to 364 days imprisonment, and if any is suspended or deferred, up to 5 years of probation. Again, if a judge places an offender in jail for 364 days, once the sentence is completed, the judge has no authority to place a defendant on 2 or 3 years of probation.

ABS/svb