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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/13  
 SPONSOR HJC LAST UPDATED 02/26/13 HB 349, 479 & 31/HJCS  
 SHORT TITLE DWI Convictions for Sentencing SB \_\_\_\_\_  
 ANALYST Jorgensen

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	\$480.5	\$464.25	\$944.75*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*The fiscal impact includes only the anticipated needs of the Public Defender Department. Additional costs for prosecution and incarceration are not expressed in the above estimated budget impact.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Attorney General’s Office (AGO)
- Department of Public Safety (DPS)
- Department of Transportation (DOT)
- New Mexico Sentencing Commission (NMSC)
- Public Defender Department (PDD)
- Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

The House Judiciary Committee substitute for House Bill 349, 479 & 31 combines all of the provisions within these bills into the four sections of the committee substitute. Section 1 is HB 31, section 2 is HB 479, and sections 3 and 4 are HB 479.

Section 1 of the committee substitute would amend the habitual offender statute to require that a felony DWI conviction be considered a predicate felony offense that must be used in determining if the person is a habitual offender. Under the current habitual offender statute, persons convicted of more than one noncapital felony are considered habitual offenders whose basic sentences can be enhanced for subsequent felony convictions. Under the current law, felony DWI convictions are expressly excluded for purposes of sentence enhancement under the Habitual Offender Act.

Section 2 provides that following a driver's license revocation for driving under the influence of intoxicating drugs or alcohol, one of the requirements to reinstate the license is the completion of a minimum of six months of driving with an ignition interlock with no attempts to circumvent or tamper with the device. HB 349 adds the following provisions: 1) that during this six month period the ignition interlock device must not register a measurement of four one hundredths or more; and 2) that persons must have at least one test per week.

Section 3 amends Section 66-8-102 NMSA 1978 so that a DWI offender who receives a sentence of incarceration and is ordered to serve the sentence under house arrest, the court may order the offender obtain a home breathalyzer device that identifies the person providing the sample, and provide a morning and evening breath sample, for the duration of the house arrest. The offender shall pay all costs associated with the device unless the offender is determined by the court to be indigent.

Section 4 amends Section 66-8-102.3 to include home breathalyzer devices alongside ignition interlock devices as covered by the "interlock device 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**

The fiscal impact in the table above reflects the anticipated costs to the Public Defender Department (PDD) associated with the enactment of section 1 of this legislation. The PDD anticipates that the enactment of this legislation would result in an increased demand for trials for felony DWI offenses. The Department assumes that a 6 percent increase in demand for trials will lead to the need to hire an additional 6.5 attorney FTE to handle the increased workload.

The District Attorneys did not provide a fiscal impact report for section 1 of this bill, but it is reasonable to assume that when the costs for defense increase, so too will the costs for prosecution. Further, the NMCD has stated that enactment of section 1 of this bill may impact the NMCD in subsequent years, as offenders convicted of two or more felony DWI offenses or two or more other felony offenses start being sentenced to the NMCD to serve longer prison sentences as habitual offenders. At some point in the future, these longer or enhanced prison sentences could potentially impact the NMCD's inmate population although any resulting fiscal impact cannot be accurately predicted.

In regard to sections 3 and 4, the legislation states that a judge *may* impose a home breathalyzer on a DWI offender confined to house arrest, it is unknown how many individuals this legislation may affect. The Department of Transportation (DOT) reports that the interlock device fund is currently solvent and that the provisions of HB 479 will not have a significant impact on the funding status of the fund.

### **SIGNIFICANT ISSUES**

Under the provisions contained in section 3 of the bill, the Traffic Safety Division (TSD) would have to promulgate rules, a licensing process, and a network of providers before implementing the law. The DOT reports that the New Mexico Administrative Code (NMAC) rulemaking process takes approximately six to nine months, and the promulgation of rules under NMSA 1978, Section 66-8-102 by June 1, 2013 is not practicable.

**TECHNICAL ISSUES**

The provisions contained in section 3 may result in a conviction potentially requiring an individual to acquire a home breathalyzer and an ignition interlock at the same time. In such instances, an indigent person with a home breathalyzer and an ignition interlock device would cause the interlock device fund to incur costs for both devices, which would cause a more rapid depletion of the interlock device fund.

**ALTERNATIVES**

The DOT recommends the following change to section 2:

Changing the requirement of at least one ignition interlock test per week to requiring the offender show the vehicle was actually used during the time the ignition interlock device was installed on the vehicle.

NCJ/blm:svb