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FISCAL IMPACT REPORT

ORIGINAL DATE
SPONSOR Lewis **LAST UPDATED** 02/09/15 **HB** 131

SHORT TITLE DWI Tests & Interlock Time Requirements **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund Local Government Funds

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 30, HB 86 and HB 120

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Administrative Office of the District Attorneys (AODA)
 Taxation & Revenue Department (TRD)
 Department of Finance & Administration (DFA)
 Department of Health (DOH)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 131 amends numerous sections within the Motor Vehicle Code relating to penalties for driving while under the influence of intoxicating liquor or drugs (DWI). Substantive changes include:

- Period of time a DWI offender's license is revoked now depends on both the number of DWI convictions as well as the driver's breath or blood alcohol concentration (BAC):
 - For a first conviction, revocation for one year if BAC less than 0.16; two years if

BAC 0.16 to less than 0.24; and four years if BAC 0.24 or greater;

- For a second conviction, revocation for two years if BAC less than 0.16; four years if BAC 0.16 to less than 0.24; and remainder of person’s life if BAC 0.24 or greater;
 - For a third conviction, revocation for three years if BAC less than 0.16; and remainder of person’s life if BAC 0.16 or greater; and
 - For a fourth conviction, revocation for remainder of person’s life (subject to five year review by district court) (Section 2(C) and (P));
- These same time periods also apply to installation of required ignition interlock devices (Section 3(N));
 - A person who refuses a BAC test is assumed to have a BAC of 0.16 in determining interlock requirement period (Section 3(O));
 - A person who has not installed an interlock device is required to participate in a court-approved sobriety monitoring program, violations of which could lead to jail time (Section 3 (R)); and
 - The period of probation following a first DWI conviction is extended from up to one year to up to four years (Section 3 (E)).

The effective date of this bill is July 1, 2015.

FISCAL IMPLICATIONS

AOC reports any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. Increased penalties cases take up a considerable amount of judicial time, as defendants choose to retain attorneys and demand jury trials, leading to an increase in the amount of work that needs to be done by the courts, thus requiring additional resources to handle the increase. In addition to the courts, increased budgetary impact may be anticipated in district attorney, public defenders and corrections budgets, although at this time they are unquantifiable. AODA notes that many DWI offenders are or become indigent following their convictions; it is unclear whether a state agency would be responsible for the cost of indigents participating in a monitoring program as authorized in Section 3(R) of this bill, as well as the costs of the mandatory incarceration of at least 48 hours for each failure to maintain sobriety (which is monitored daily for the first twelve months) or otherwise comply with such a program. Offenders serving these jail terms, which likely would be served in county facilities, are not eligible for community release or electronic monitoring programs under this bill.

SIGNIFICANT ISSUES

AGO comments that HB 131 addresses a significant loophole in existing law—DWI offenders who do not install ignition interlocks yet continue to drive-- by requiring sobriety monitoring and maintenance for the same period as the installation of an ignition interlock device is required.

However, it raises two issues as to alternative prosecution theories of DWI and the conclusive presumption established in this bill:

HB 131 relies on the breath or blood alcohol concentration level for a DWI conviction. It thus excludes a DWI conviction based on the slightest degree of impairment theory of DWI or a conviction for being under the influence of any drug; in either instance an offense under the Motor Vehicle Code has occurred but a breath or blood alcohol concentration level is not available. See Section 66-8-102, NMSA 1978.

This bill also adds a conclusive presumption that a breath or blood alcohol concentration is .16 when the offender refuses to submit to testing. Conclusive presumptions are disfavored in criminal law. Rule 11-302 NMRA (presumptions in criminal cases); State v. Trossman, 2009-NMSC-034, ¶ 11, 146 N.M. 462, 212 P.3d 350.

This conclusive presumption raises another issue, as DOH points out:

A person who refuses to submit to BAC testing is assumed to have a BAC of 0.16 for the purposes of determining length of time an interlock is required to be installed. This presumption may encourage more offenders who are very intoxicated to refuse BAC testing because an interlock would be required for a shorter period of time if the offender refuses BAC testing than if the offender submitted to testing and the resulting BAC was at or above 0.24.

Additionally, TRD addresses two implementation concerns:

Section 3(R)'s sobriety monitoring program as a substitute for an interlock device will lead to confusion because a person might attend the program and not have an interlock device as part of the criminal case, but when the person attempts to reinstate the license, MVD will require the person to obtain an interlock license and device for six months pursuant to another existing law. See Section 66-5-33.1, NMSA 1978.

Section 2 of the bill amending the mandatory revocation periods based upon a person's alcohol concentration as well as the number of prior DWI convictions will be difficult for MVD to implement because the courts are not required to report a person's alcohol concentration as part of the information it submits on a DWI conviction. MVD cannot rely on the alcohol concentration provided on the Implied Consent side of the incident as many times a plea deal will reduce an aggravated charge (BAC 0.16 or greater) down to a simple DWI charge (BAC less than 0.16).

CONFLICT

This bill conflicts with HB 30, HB 86 and HB 102: all four bills amend Section 66-8-102, NMSA 1978 in different ways.

OTHER SUBSTANTIVE ISSUES

NMCD reports that on average, approximately fifty percent of all offenders in its care and custody for DWI are remanded for more than two previous convictions. Given the apparent level of predatory DWI offending and alcohol addiction in our state, extension of community

correctional safeguards aimed at not only protecting the public but also incentivizing sobriety may reasonably be considered to have positive impacts upon both public safety and DWI recidivism.

DOH notes that requiring the use of ignition interlocks for all people convicted of alcohol-impaired driving is recommended by the Community Guide for Preventive Services (supported by the Centers for Disease Control and Prevention). In multiple studies, the required use of ignition interlocks resulted in a sixty-seven per cent median decrease in re-arrest rates among those convicted of alcohol-impaired driving.

(www.thecommunityguide.org/mvoi/AID/ignitioninterlocks.html).

HB131 increases the prerequisites for removing an interlock device for offenders with high BAC results. The Community Preventive Services Task Force, which publishes the Community Guide, asserts that more widespread and sustained use of interlocks among people convicted of alcohol-impaired driving could have a substantial impact on alcohol-related crashes (www.thecommunityguide.org/mvoi/AID/ignitioninterlocks.html).

MD/je/bb