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## FISCAL IMPACT REPORT

SPONSOR SJC ORIGINAL DATE 3/05/19  
LAST UPDATED 3/15/19 HB \_\_\_\_\_  
SHORT TITLE DWI With Minor In The Vehicle SB CS/517/aSFI#1/aHJC  
ANALYST Edwards

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$14.0			\$14.0	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Taxation and Revenue Department (TRD)

Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment clarifies the driving while intoxicated with a minor in the vehicle misdemeanor only applies if the minor does not suffer great bodily harm or death.

#### Synopsis of Senate Floor #1 Amendment

Senate Floor Amendment #1 to Senate Judiciary Committee Substitute for Senate Bill 517 changes the definition of a minor from an individual who is younger than 18 years of age to someone who is younger than 13 years of age.

#### Synopsis of Original Bill

Senate Judiciary Committee Substitute for Senate Bill 517 creates a new section of Chapter 66, Article 8, NMSA 1978, that would create a new offense of driving under the influence of intoxicating alcohol or drugs in violation of 66-8-102 NMSA 1978. The new offense is a misdemeanor offense which shall be in addition to a charge for the violation of Section 66-8-102 NMSA 1978. The law defines minor as someone who is under the age of 18 years of age.

### FISCAL IMPLICATIONS

There is no additional impact as a result of the HJC or Senate Floor Amendment #1 to Senate Judiciary Committee Substitute for Senate Bill 517.

In response to the bill as originally introduced, TRD analysis stated:

If passed, this bill will require the New Mexico Motor Vehicle Division to make minimal updates to the Tapestry system to add this violation to the existing list. Implementation of this bill will have a low impact on the Information Technology Division. Total time to complete, test and implement changes is approximately 200 hours and approximately \$14 thousand (soft cost for internal resources [in FY19]). This bill creates a new section for penalty for DWI with a minor in the vehicle. This requires addition of this new violation code for the existing list in Tapestry and testing the configuration changes.

AOC, in response to the bill as originally introduced, explained 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. Since this Bill would not provide for any additional sanctions or penalties for a DWI offense of this nature, above what is available under Section 66-8-102 NMSA 1978, it is unknown if this new Section would actually be used by prosecutors in lieu of a regular DWI charge.

## **SIGNIFICANT ISSUES**

AOC submitted the following analysis to the bill as originally introduced:

This bill says that whoever commits this offense would be guilty of a misdemeanor. Section 66-8-7(B) NMSA 1978 says, ‘unless another penalty is specified in the Motor Vehicle Code, every person convicted of a misdemeanor for violation of any provision of the Motor Vehicle Code shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment for not more than ninety days or both.’ Since this bill does not specify a different penalty, the courts would be limited to the penalty of 90 days of jail and or a \$300 fine. Also, Section 31-20-5(A) NMSA 1978 says, “The total period of probation for the magistrate or metropolitan courts shall be no longer than the maximum allowable incarceration time for the offense or as otherwise provided by law.”

Since this bill does not provide for a different period of probation, the courts would only be allowed to place an offender on probation for up to 90 days. Section 66-8-102 NMSA 1978 provides for a probationary period of up to one year for a first DWI, and five years for a second and subsequent offense. Furthermore, credit must be given for time served on probation, unless otherwise provided by law. *See State v. Kenneman*, 1982-NMCA-145. Therefore, when a probationer violates probation, they get credit for all the time served on probation, prior to the violation. That goes against the suspended jail time, and reduces the amount of time the court can place them back on probation with new conditions, unless the law provides otherwise. Section 66-8-102(U) NMSA 1978, provides that, “if an offender's sentence was suspended or deferred in whole or in part and the offender violates any condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on

probation.” Section 66-8-102 NMSA 1978 also provides for other specific conditions of the sentence, such as DWI school and ignition interlock. The new Section proposed by this bill does not provide for any of those things, and it is therefore unlikely that the prosecuting authority would choose to charge an offender under this new Section, as opposed to 66-8-102. Furthermore, this new Section would not provide for different levels of penalties depending on whether the offense was a first or subsequent. Finally, this bill only addresses driving under the influence of alcohol and does not address the influence of intoxicating drugs, so it would not be applicable to those types of offenders.

TE/sb