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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/11

SPONSOR Stapleton LAST UPDATED \_\_\_\_\_ HB 183

SHORT TITLE DWI First Offender Follow-Up Program SB \_\_\_\_\_

ANALYST Daly

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	\$50.0- \$100.0*	\$50.0- \$100.0*	\$100.0- 200.0*	Recurring	Driver Improvement Fund 10020

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See Fiscal Implications below

May conflict with HB 49 and SB 197

Relates to HB 183, HB 263, HB 564, SB 3, SB 127, SB 306, SB 307 and SB 308

### 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)  
 Taxation & Revenue Department (TRD)  
 Public Defender Department (PDD)  
 Health Policy Commission (HPC)  
 Department of Transportation (DOT)

### SUMMARY

#### Synopsis of Bill

House Bill 183 adds an additional requirement for first-time DWI offenders that they attend a DWI follow-up program that begins three to five months after they complete DWI school.

This bill carries a delayed effective date of July 1, 2011.

### FISCAL IMPLICATIONS

The range set out in the table above is based on DOT estimates of the annual costs of developing and implementing the follow-up program. DOT notes that part of the cost would be offset by

licensing and student enrollment fees: currently, all first-time DWI offenders must attend a 12-hour DWI school. DOT licenses the schools and facilitators/instructors. The schools may charge up to \$175 in tuition and for each student that completes the program, a school must forward \$50 to DOT. Revenue from the DWI school program is used for state-mandated programs to reduce DWI and crashes. DOT has not yet developed a curriculum nor set a fee structure for the follow-up program, so the positive impact from fee collection cannot be calculated.

### **SIGNIFICANT ISSUES**

As background information, DOT states that in 2007, it received a one-time \$30,000 appropriation to support a supplementary 6-hour DWI course for persons convicted of DWI which was designed to be completed by the offender within 1 year of the initial DWI program. Participation in the supplemental course suffered because enrollment was not required by statute and, in some instances, exceeded the probation and parole oversight periods for those DWI offenders. This bill would make attendance mandatory within a shorter time period.

DOT explains the existing DWI school curriculum is designed to facilitate change in the DWI offender's behavior using research-based materials, facilitator training and program delivery. Its work to develop the follow-up driver rehabilitation program will include contractor selection and curriculum and material development, which will then determine the tuition and enrollment fees.

The PDD suggests that, in light of existing judicial discretion to impose continued counseling as needed and supervised probation up to one year, adding the follow-up program in addition to the current first offender program would be duplicative of the services and treatment already available.

### **ADMINISTRATIVE IMPLICATIONS**

In addition to developing the follow-up program, DOT will need to update its existing regulation and standards. It estimates the rule revision will take approximately six months. Further, the follow-up course will require additional monitoring to ensure compliance with the revised rule.

The AOC reports that misdemeanor compliance monitoring is also currently performed either by the court or by the local county compliance program. Both the courts and the county programs are struggling with budget cuts to handle current workloads, and these additional duties will increase the burden on existing staff and funding. Similarly, the PDD expresses concern that this new program could add to the workload for judges and the PDD if more bench warrants are issued to DWI offenders for failure to attend or complete the follow-up program.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 183 may conflict with HB 49 and SB 197 as all three bills amend the same section.

HB 183 relates to:

- HB 49, DWI as Drugs in Blood & Interlock for Alcohol
- HB 263, Vehicle Seizure W/DWI Arrest in Certain Cases
- HB 564, Expungement of Certain DWI Records
- SB 3, Blood Tests for Intoxication and Drugs
- SB 127, DWI Plea Agreements & Refused Blood Tests

SB 306, Home Breathalyzer for Certain DWI Offenders

SB 307, Seizure of Vehicle for Certain DWI Offenders

SB 308, Interlock Regulations for DWI Offenders

### **TECHNICAL ISSUES**

The AGO notes that existing law imposes an additional 48 hour mandatory sentence for failure to comply with any of the statutory requirements for first-time DWI offenders that are set out in a list that appears on page 4 at line 4-7, but the bill does not amend that list to include the new follow-up program being added by this bill.

### **OTHER SUBSTANTIVE ISSUES**

DOT reports that in 2008 the state had about 8,500 first-time DWI convictions. Out of that number, about 7,300 attended DWI school.

The HPC advises that New Mexico has made considerable progress in its fight to stop DWI. Strategic and aggressive programs and policies in tandem with effective law enforcement, public awareness campaigns, liquor control measures, educational programs and treatment initiatives have led to a 35% reduction of alcohol-involved fatalities from 2003-2008. New Mexico has received national recognition for this benchmark, which is coupled with the State's move out of the National Highway Traffic Safety Administration's top ten list for the alcohol-related death rate per 100,000 miles traveled.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

First-time DWI offenders will be required only to attend the current 12-hour DWI course.

### **POSSIBLE QUESTIONS**

The AODA asks if an offender is arrested for a second DWI before it is time for the offender to attend the follow-up program, will the offender still be required to attend the follow-up program in addition to the penalties for a second DWI conviction?

MD/bym