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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/11

SPONSOR Wirth LAST UPDATED _____ HB _____

SHORT TITLE Prohibit Certain DWI Plea Agreements SB 127

ANALYST _____

Relates to HB 49.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
Total	NFI	\$2.0-\$19.6; \$20.0-196.0	\$2.0-\$19.6; \$20.0-\$196.0	\$4.0-\$39.2; \$40.0-\$392.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Attorney General's Office (AGO)
 Health Policy Commission (HPC)
 Public Defender Department (PDD)
 Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

Senate Bill 127 would enact an additional provision to NMSA 1978 Section 66-8-102.1 regarding limitations on guilty pleas where a complaint or information alleges a violation of Section 66-8-102. That section relates to driving under the influence of intoxicating liquor or drugs and the penalties to be imposed upon conviction.

Under Section 66-8-102.1 as currently written, when a complaint or information alleges a violation of Section 66-8-102, any guilty plea entered into to resolve as to the charges shall include at least a plea of guilty to a violation under Section 66-8-102 if the results of a test performed under the Implied Consent Act disclose a specified alcohol concentration (.08 or more, unless the person is driving a commercial vehicle, in which instance the amount is .04 or more). The proposed Subsection B in SB 127 adds an additional alternative if the person has

refused to submit to a chemical test authorized by the Implied Consent Act. Under SB 127, under either alternative a guilty plea must include a plea of guilty to a violation of Section 66-8-102.

FISCAL IMPLICATIONS

The provisions of this bill may result in fewer pleas and more trials. The estimated ranges of costs shown in the table above were derived from data provided by AOC, and include those incurred for prosecution, defense and judicial time and expenses. The first number represents the estimated range for one DWI case that actually goes to trial. The second range assumes ten additional trials statewide per year, causing costs to increase tenfold: from \$2,000 to \$19,600 to \$20,000 to \$196,000.

SIGNIFICANT ISSUES

SB 127 would prevent any offender who violates Section 66-8-102 but refuses to submit to a chemical test authorized by the Implied Consent Act from being allowed to plea to a lesser charge than DWI. As such, the bill closes an existing loophole where the prohibition against agreements contrary to that Section if the results performed under the Implied Consent Act disclose the specified alcohol concentration does not apply if the offender has refused to submit to a chemical test.

The AGO asserts that this bill is likely unenforceable (as is the existing section which it seeks to amend) because it seeks to limit the discretion of the prosecutor to resolve a case by plea to a lesser, non-DWI offense (i.e. careless or reckless driving) when the case was initially charged as DWI. SB 127's limitation on prosecutorial discretion to resolve a case with a lesser plea, which plea may be based upon such factors as initial information that is later determined to be inaccurate, the loss or suppression of evidence, new evidence and uncooperative witness(es), implicates prosecutorial discretion unique to a district attorney, who is an officer of the executive branch. Thus, the AGO believes this bill likely runs afoul of the separation of powers clause of the state constitution. Similarly, the AGO notes the restriction in this bill also implicates the power of the judicial branch to approve (or disapprove) such plea agreements. The PDD also raises the issue of improper limitation on prosecutorial discretion, including in situations where the alleged refusal is in dispute.

RELATIONSHIP

SB 127 relates to HB 49, DWI as Drugs in Blood & any Interlock for Alcohol.

OTHER SUBSTANTIVE ISSUES

The DOT suggests that SB 127 can be considered an “alcohol countermeasure” strategy that could affect DWI rates by addressing the law, prosecution, adjudication and offender treatment monitoring and control, which has the potential to contribute to a reduction in alcohol-related traffic crashes and deaths. If passed, DOT believes it would have a strong deterrent effect by changing behavior in that impaired drivers who are arrested would not be able to plea to a lesser charge than DWI.

The HPC reports that New Mexico has dropped out of the top-ten ranking for driving while impaired (DWI) fatalities according to statistics released by the National Highway Traffic Safety Administration. New Mexico, which once had the worst DWI problem in the nation, is now out of the top-ten in all national rankings. New Mexico dropped to 11th in the nation for the number of DWI fatalities per 100,000 population in 2008 (There was a 21 percent reduction in drunk driving fatalities.). New Mexico was ranked 9th in the nation for DWI fatalities in both 2006 and 2007. In 2006, New Mexico dropped from 9th to 18th in the rate of alcohol involved fatalities based on 100 million motor vehicle miles traveled.

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