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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/11  
 SPONSOR SFL LAST UPDATED 03/18/11 HB \_\_\_\_\_  
 SHORT TITLE Use of Electronic Sobriety Monitoring Devices SB 197/SFLS  
 ANALYST Sanchez, C.

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	+\$200.0	+\$200.0	Recurring	Interlock Device Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		+\$30.0	+\$30.0	+\$60.0	Recurring	General Fund
		+\$400.0	+\$400.0	+\$800.0	Recurring	Interlock Device Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Bernalillo County Metropolitan Court (BCMC)  
 Public Defender Department (PDD)  
 Administrative Office of District Attorneys (AODA)  
 Department of Public Safety (DPS)  
 Department of Corrections (NMDC)

Taxation and Revenue Department (TRD)  
New Mexico Department of Transportation (NMDOT)

Other Responses Received From  
Rocky Mountain Offender Management Systems (RMOMS)

## **SUMMARY**

### Synopsis of Bill

The Senate Floor Substitute for Senate Bill 197 allows the court to, as a condition of probation for a DWI conviction, order a defendant to obtain and use an electronic sobriety monitoring device available in the jurisdiction and approved by the court. The defendant would pay all costs unless determined to be indigent. All costs for an indigent's device would be paid by the indigent interlock fund.

The substitute requires the use of a court-ordered sobriety monitoring device for reinstatement of a driver's license that was revoked as the result of driving under the influence of intoxicating liquor or drugs. The use of the court ordered sobriety monitor requires an individual to use the device on a daily basis or as specified by the court with no attempts to circumvent or tamper with the device.

The bill amends Section 66-8-102 ("DUI Statute") by inserting a new paragraph (P) that would permit any court to require a defendant convicted under the DUI Statute to obtain and use an electronic sobriety monitoring device as a condition for reinstatement of a driver license. Under the amendment, unless determined to be indigent, the offender would be responsible for all costs of the device.

The bill would also amend Section 66-8-102.3 NMSA to provide that the traffic safety bureau may pay up to \$30.00 per month toward the lease and use of an electronic sobriety monitoring device – provided that money is available in the interlock device fund.

## **FISCAL IMPLICATIONS**

According to the AOC, all of these devices would impose additional costs on the offender, and if the offender is deemed indigent there would be further demands made on the "interlock device fund." That fund actually ran out of money in FY10 due to the number of offenders ordered to install ignition interlocks who were also deemed indigent by the courts. Responsibility for evaluating indigence changed in FY11 to the Traffic Safety Bureau and it is unclear at this point in the fiscal year if the fund will remain solvent through to the end of the year.

In addition to the above, ensuring that electronic sobriety monitoring devices have been installed and that offenders comply with their use may require the involvement of compliance monitors in some cases. The AOC believes some courts may not have the resources necessary to monitor offender compliance with the requirement to purchase and install such devices.

The Metropolitan Court estimates that it will require the services of, at minimum, an additional six (6) Probation Officers (PO2s) and one (1) supervisor to handle the additional caseload that would result from passage of the bill. Salary and benefits costs for the seven (7) FTEs will be an estimated \$394,100 annually.

## **SIGNIFICANT ISSUES**

According to the Department of Corrections (NMDC), requiring the devices will promote accountability and personal responsibility for offenders.

According to the Administrative Office of the Courts (AOC), an effective electronic sobriety monitoring program will require regular monitoring to ensure compliance, and additional court resources in enforcing court orders against offenders who fail to comply with the requirements.

The AOC also reports that at present, many counties have a misdemeanor county compliance officer, or some degree of monitoring by the adult probation office (APPO). County compliance officers are funded by the local DWI grant program, approved by the Department of Finance and Administration. Probation officer resources are already stretched thin. According to a 2008 report to the Legislature of an Interagency Task Force studying the need for probation services in the magistrate court, APPO estimates that current probation and parole officer caseloads (124 cases) are far higher than both the national average, and nationally accepted standards (75-80 cases). *Report to the Legislature concerning House Memorial 12, 2008*. The Task Force report also concluded that “[i]t is obviously beyond the reach of the state’s budget for the foreseeable future to expand APPO services to magistrate courts to any great extent.” (p. 4).

## **ADMINISTRATIVE IMPLICATIONS**

According to the AOC, there are limited resources around the state for oversight of electronic sobriety monitoring devices. The courts, Corrections Department, and county DWI programs lack the staff and resources to provide the comprehensive monitoring necessary to full oversight of court-mandated ignition interlock devices. Personnel need to be trained and available to respond to any reports of alcohol use by an offender using an electronic sobriety monitoring device. SB 197 does not address the issue of who will be responsible for ensuring such electronic sobriety monitoring devices are installed and maintained, nor how such staff will be provided and funded.

In some instances alcohol monitoring device companies may provide all installation, maintenance, and monitoring services under a single fee.

## **PERFORMANCE IMPLICATIONS**

According to the Bernalillo County Metropolitan Court (BCMC), the most significant implication of the additional enhanced monitoring, both mandatory and discretionary, of passage of SB197 is the burden that will be put – is the significantly increased caseload that will result – not from monitoring the sobriety devices – but in addressing the vastly increased number of probation violations that will result. The glut of such cases will dramatically affect the caseloads not only of the Court’s Probation Officers, but of each of the judges in the Court’s Criminal Division.

## **TECHNICAL ISSUES**

Currently, the Motor Vehicle Division collects a \$100 indigent device fund fee from non indigent drivers at the time of licensure. SB 197 does not contain a provision that provides for the collection of the \$100 indigent device fund fee from individuals who will only be using the

electronic sobriety monitoring device.

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

Status quo

CS/mew:bym