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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/11

SPONSOR Cravens LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Interlock Regulations for DWI Offenders SB 308

ANALYST Wilson

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$200.0-\$400.0	\$200.0-\$400.0	Recurring	General Fund and Local Government Funds

(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>TRD</b>		\$17.5-\$39.5			Nonrecurring	General Fund
<b>DPS</b>		\$1,100.0	\$1,100.0	\$2,200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 3, SB 127, SB 197, SB 307, SB 306, HB 49, HB 183 & HB 263

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 Department of Public Safety (DPS)  
 Department of Transportation (DOT)  
 Taxation & Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 308 provides that upon arrest for DWI, the vehicle driven by the person arrested will be immobilized at a location specified by the owner. If the person arrested is the owner of the

vehicle, the vehicle shall remain immobilized until an ignition interlock device is installed on the vehicle or until final adjudication of the charges. If the person arrested is not the owner, the owner may obtain the vehicle upon submission of a sworn affidavit to Motor Vehicle Division (MVD) specifying that the owner will not let the person arrested for DWI drive the car while that person's license is revoked. If that person is later found driving that same vehicle without a valid driver's license, the vehicle shall be subject to forfeiture pursuant to the provisions of the Forfeiture Act.

### FISCAL IMPLICATIONS

District courts have jurisdiction over forfeiture hearings, and hearings related to vehicles subject to forfeiture by this Act have the potential to increase caseloads in the district courts, thus requiring additional resources to handle the increase. The AOC is currently working on possible parameters to measure the resulting case increase.

MVD will need to develop the form of affidavit the owner will fill out and it will also need to develop a form the owner can provide that will allow the vehicle to be released. Implementation of the requirement that MVD keep the affidavit with the vehicle's registration records and make that information readily available to law enforcement, will require modification of MVD's records systems. Implementation of this bill will include:

Modifications to existing mainframe DB2 table	30 hours
CICS application to allow adding affidavit to record	160 hours
CICS application to display the affidavit status	<u>160 hours</u>
	350 hours

Additionally the provisions of this bill may require:

Modifications to MVD Mainframe Batch to accept the record	320 hours
MVD 2.0 Modify SQL server tables	40 hours
MVD 2.0 to display affidavit record	<u>80 hours.</u>
	440 hours

Total Hours: 350-790 @\$50/hour = \$17,500 to 39,500

There will be some revenues for the general funds and local government funds from the confiscated vehicles when they are sold at auction.

### SIGNIFICANT ISSUES

MVD will need to track the affidavit submitted by the owner attesting that the person will not let the specific DWI offender drive the vehicle. This information will need to be displayed on the vehicle records accessed by law enforcement, as this will be the only way law enforcement will know that the vehicle is subject to forfeiture.

The requirement that the vehicle be immobilized until an ignition interlock device is installed will require that the interlock vendor have a mobile installation service, or that the owner make an immediate decision to immobilize the vehicle at a particular interlock provider's place of business.

DPS states that the provisions of this bill will require funding for extra monetary and compensatory overtime for officers for the following reasons:

This bill has the potential to significantly increase the unobligated time an officer spends associated with the arrest of an individual for DWI as the bill specifically states the vehicle in question will be immobilized at a location specified by the owner. As a high percentage of these situations occur where the owner is not present, attempting to locate the individual will occupy undue time by the officer. Additionally, ensuring the vehicle is taken to a specific location and immobilized as per the bill's requirement will amplify the time involved for the arresting/assisting officers. This too will be exacerbated by New Mexico's rural areas and communities. Generally, said vehicle will simply be taken to the tow yard of the on-call wrecker service to minimize the officer's time.

Additionally, there is potential liability for law enforcement agencies under this bill. Should a vehicle be towed and secured in a commercial tow yard due to unreasonable requests by the owner or the owner is unavailable or not contacted, it becomes that agencies responsibility to show cause through courts and/or the tort claim act. The potential for law enforcement agencies to be required to cover storage fees exists as well under these scenarios.

Furthermore, for those scenarios where potential forfeiture comes to play, vehicle seized pending this process will have to be stored at secured locations. This will be difficult at best for DPS facilities and probably require transferring the vehicle to the headquarters facility in Santa Fe. This too will encumber man hours as well as fuel associated with the transportation

The Legal Division of DPS provided the following:

The Bill states that the MVD shall keep the affidavit of the owner who let the unlicensed driver use the vehicle with the vehicle's registration records, and if the person arrested is thereafter found driving a vehicle without a valid driver's license, the vehicle is subject to forfeiture pursuant to the Forfeiture Act. The language appears only to pertain to the owner who let the unlicensed driver drive being subject to forfeiture provisions, while allowing a driver/owner to be free of the potential forfeit of his vehicle. If the purpose is make the owner or driver's vehicle subject to forfeit, the language needs to be less ambiguous.

The means to accomplish these forfeitures, the Forfeiture Act, is a cumbersome and potentially unworkable process with which to deal with these cases. The Forfeiture Act was passed in the wake of the New Mexico Supreme Court Case, State v. Nunez . Nunez found that forfeitures under the Controlled Substances Act were punitive, rather than remedial in nature and required that the forfeiture action be carried out in the context of the criminal case in a bifurcated trial. These requirements are reflected in the Forfeiture Act. In addition, the Forfeiture Act requires that within 30 days of making seizure, the state shall file a complaint for forfeiture or return the property to the person from whom it was seized. NMSA § 31-27-05.

The Act provides that state district courts have jurisdiction over forfeiture proceedings.

NMSA § 31-27-6 (B). Since the underlying offense is a misdemeanor and the Forfeiture Act contemplates that the underlying offense be a felony, it is unclear where the complaint should be should be filed or even if it can be filed in the district court.

If the state fails to prove, by clear and convincing evidence, that the person charged with the crime for which the property is alleged to be property subject to forfeiture is the owner of the property the forfeiture proceeding shall be dismissed and the property shall be delivered to the owner, unless possession of the property is illegal; and the owner shall not be subject to any charges by the state for storage of the property or expenses incurred in the preservation of the property.

Clearly, the Forfeiture Act was enacted with the “punitive” nature of forfeitures in mind. However, the New Mexico courts have found forfeitures of vehicles in the DWI context to the remedial rather than punitive and have upheld municipal ordinances dealing with these vehicles. When compared to the municipal ordinances of Albuquerque and Santa Fe, whose provisions for forfeiture are more streamlined as well as being constitutionally sound, the use of the Forfeiture Act is problematic.

If the Forfeiture Act process is to be used, the District Attorney’s Offices, statewide, will be responsible for the filing and prosecution of the complaints for forfeiture of these vehicles in a bifurcated proceeding. Since the underlying offense is a most likely to be a misdemeanor and the Forfeiture Act contemplates that the underlying offense be a felony, it is unclear where the complaint should be filed or even if it could be filed in the district court.

## **ADMINISTRATIVE IMPLICATIONS**

With DPS personnel executing numerous arrests under 66-5-39/66-8-122G annually, this bill poses a significant impact on DPS ability to facilitate the forfeiture process. It is estimated DPS Legal Division will need three additional FTE’s to facilitate the finalization of the forfeiture process at the headquarters level and at least one FTE per each of the 12 districts in order to manage the tracking and document distribution that will be required in order to follow this bill’s requirements.

## **RELATIONSHIP**

SB 308 relates to the following DWI bills:

- SB 3, Blood Tests for Intoxication and Drugs
- SB 127, Prohibit Certain DWI Plea Agreements
- SB 197, Use of Electronic Sobriety Monitoring Devices
- SB 307, Seizure of Vehicle for Certain DWI Offenders
- SB 306, Home Breathalyzer for Certain DWI Offenders
- HB 49, DWI as Drugs in Blood & Interlock for Alcohol
- HB 183, DWI First Offender Follow-Up Program
- HB 263, Vehicle Seizure W/DWI Arrest in Certain Cases

**OTHER SUBSTANTIVE ISSUES**

Currently, individuals who are arrested for DWI are not required to install an interlock until they are administratively revoked by MVD or until convicted in court. There were approximately 20,000 DWI arrests in 2009 according driver history data from MVD. MVD reports that approximately 18,000 DWI offenders were revoked administratively in 2009. Approximately 9,500 ignition interlock licenses were issued in 2009, according to MVD data. In order to obtain the interlock license, the DWI offender must show evidence of an interlock installation.

A 2007 traffic injury report on interlocks for first offenders states that vehicle interlocks have been shown to reduce the recidivism of DWI offenders. In addition, according to the report, the benefits of requiring an interlock for first offenders exceeds the cost by a factor of three.

DW/mew