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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/13

SPONSOR Pacheco LAST UPDATED \_\_\_\_\_ HB 607

SHORT TITLE DWI While on a Suspended License SB \_\_\_\_\_

ANALYST Jorgensen

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	\$2,776.9	\$2,776.9	\$5,553.8	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 Attorneys (AODA)  
 Attorney General's Office (AGO)  
 Department of Public Safety (DPS)  
 New Mexico Corrections Department (NMCD)  
 Department of Transportation (DOT)  
 New Mexico Sentencing Commission (NMSC)  
 Public Defender Department (PDD)  
 Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

House Bill 607 (HB 607) amends Section 66-5-39 to add language that driving on a suspended or revoked license while under the influence of alcohol or drugs is a fourth degree felony and that any fine or imprisonment imposed shall not be suspended, deferred or taken under advisement. It also amends Section 66-5-41 to make it a fourth degree felony for a person to knowingly allow someone whose license is suspended or revoked for driving under the influence to operate a vehicle owned by them. Section 66-8-102 is amended to add driving under the influence on a revoked or suspended license, or with an interlock license, to the list of items that qualify as aggravated driving under the influence. Language is also added to that Section stating that, upon conviction pursuant to the Section that results in a third degree felony or greater, the Motor Vehicle Division may suspend or revoke the registration of a vehicle, the certificate of title, registration evidence, registration plate, or any nonresident permit or other permit. Lastly, the bill amends Section 66-8-111.1, to remove the provision for a temporary license to be issued.

## **FISCAL IMPLICATIONS**

The New Mexico Sentencing Commission (NMSC) on June 30, 2012, reported 292 offenders committed to the custody of the New Mexico Corrections Department (NMCD) had a felony DWI conviction as their highest charge. That total includes new admissions for a felony DWI conviction and offenders returned to prison for revocations whose original conviction was for a DWI offense.

The assumption in the table above is based on 58 individuals being convicted of DWI while the individual's license is revoked resulting in the individual spending 9 more months in the custody of the NMCD at an annual cost of \$31.7 thousand as a result of provisions of the bill.

The fiscal impact does not include possible increases to the Public Defender Department (PDD), courts, or district attorneys as a result of increased trials.

## **SIGNIFICANT ISSUES**

The Administrative Office of the District Attorneys (AODA) has reported that this bill will shift cases from magistrate and metropolitan courts to district courts for offenders charged with DWI while having a suspended or revoked driver's license. The total number of cases will not increase for DA offices; but due to the increased seriousness of the penalty, it will take more time and resources to prosecute these cases. An offender may not plead to a felony as opposed to a misdemeanor and therefore more trials may result. Trials at the felony level requires 12 jurors, as opposed to 6 jurors at the misdemeanor level; thus possibly resulting in longer trials.

The PDD has voiced similar concerns to those expressed by the AODA.

Currently, pursuant to Section 66-8-102 NMSA1978, a DWI conviction becomes a felony offense upon a fourth or subsequent conviction.

The current penalty for permitting an unauthorized person to drive a motor vehicle is set forth in Section 66-8-7 NMSA 1978: a fine of not more than \$300 or imprisonment for not more than ninety days, or both.

## **TECHNICAL ISSUES**

The Taxation and Revenue Department (TRD) has noted the following:

The bill's language on page 11, lines 1-5, should be revised to specify what vehicle's registration should be suspended or revoked and under what circumstances. Is this language targeting a vehicle owned by the offender or a vehicle operated by the offender at the time of violation? The proposed language on page 11 beginning with "or" at the end of line 3 and including all of lines 4 and 5 should be deleted as both unclear and unnecessary.

The amendment of Section 66-8-111.1(B) on page 16, lines 11-16, results in a due process violation. Due process requires the right to request a hearing before action is taken. If there is no provision for a temporary license pending a hearing, revocation action is effectively taken before a hearing.

**OTHER SUBSTANTIVE ISSUES**

Repeat DWI offenders were responsible for an increasing proportion of fatalities from 2009 to 2011, according to data from Department of Transportation (DOT) fatal logs and the MVD citation records. In 2009, 35 percent of all DWI-related fatalities involved a repeat offender. By 2011, 58 percent of DWI-related fatalities involved a repeat offender.

**CONFLICT**

HB 607 conflicts with HB 32, HB 52, HB 162, HB 431, SB 37, SB 460 and SB 532

NCJ/svb