

LFC Requester:	Jorgensen, Connor
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**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date January 29, 2014
Bill No: HB10-305 Jan 29

Sponsor: Rep. Elizabeth Thomson **Reviewing** Attorney General's Office
Short DWI; Habitual Offender; **Person Writing** Kevin A. Graham, AAG
Title: Interlock; Home Breathalyzer **Phone:** 505-222-9012 **Email** kgraham@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

SECTION 1 of the Bill would make a significant change to current criminal law by including prior felony convictions for the crime of DWI (§66-8-102) in the types of prior felony convictions that may be used to enhance a felony offender’s potential prison sentence pursuant to the “habitual offender” statutes (§31-18-17, *et seq.*).

Under current “habitual offender” law, if an offender is convicted for most felony crimes, the offender’s sentence for the new conviction may be enhanced by a set number of years if the offender had previously (within the last ten (10) years) been convicted of other felony crimes. While there are a number of conditions that must be met in order for a prior felony conviction to be used to add prison time to an offender’s sentence (under both statutory provisions and New Mexico appellate case law requirements) the general provisions are that one (1) prior felony conviction will add one (1) year to an offender’s new felony sentence; two (2) prior felony convictions will add four (4) years to an offender’s new felony sentence; and, three (3) or more prior felony convictions will add eight (8) years to an offender’s new felony sentence.

Under current law, felony convictions for the crime of DWI (§66-8-102) are not available to be used to add prison time to an offender’s prison sentence under the habitual offender statutes. Thus, if an individual is convicted for a felony offense such as burglary, even if that same offender had previously been convicted multiple times for felony-level DWI’s, the offender’s prior DWI felony convictions could not be used to enhance the offender’s new sentence for burglary. On the other hand, if the offender had a prior felony conviction for a crime such as forgery (that occurred within the last ten (10) years and which occurred prior to this new crime of burglary) that prior forgery conviction could be used to add an additional one (1) year onto the offender’s new sentence.

The change to current law as provided in SECTION 1 would have the potential to increase the length of time an unknown number of felony offenders could be sentenced to serve in state prisons.

SECTION 2 of the Bill amends §66-5-33.1(B) by adding new subsections (B)(5) and (B)(6). Subsection (B) of §66-5-33.1 defines the legal requirements that must be met before a driver’s license may be reinstated when the driver’s license was revoked for one of the listed DWI-related offenses.

New subsection (B)(5) would impose a new requirement that the ignition interlock on the individual's vehicle have "recorded no more than two tests at a level greater than five one hundredths alcohol concentration during the six (6) months prior to reinstatement of the unrestricted driver's license." Under the language of this Section, the driver's license would not be permitted to be reinstated if there had been more than two (2) interlock tests exceeding the specified alcohol concentration level within the preceding six (6) months.

New subsection (B)(6) would impose a new requirement that there be "evidence of at least one ignition interlock test during each of twenty-four weeks during the six months." It appears the "six months" referred to in new subsection (B)(6) would relate back to the "six months prior to reinstatement of the unrestricted driver's license" language that is included in new subsection (B)(5). It is not clear from the language of new subsection (B)(6) whether the required "evidence of at least one ignition interlock test" would be required to be proven/provided by the individual seeking to have his/her license reinstated, or if the staff of the Department of Motor Vehicles would be charged with obtaining the required "evidence" before the license could be reinstated. Under this Bill language, the driver's license could not be reinstated unless the required testing evidence was found.

SECTION 3 of the Bill amends §66-8-102 (the "DWI" statute) to add to add new subsections (P) and (Q) to the statute. The Bill also renumbers/letters the remaining subsections of §66-8-102 and adds a new subsection (W)(3) to the current language of the statute.

New subsection (P) of the amended §66-8-102 provides: "If an offender receives a sentence of incarceration for driving under the influence of intoxicating liquor or drugs and is ordered to serve the sentence under house arrest, where house arrest is available, the court shall order the offender to obtain a home breathalyzer device that identifies the person giving the sample and to provide morning and evening breath samples for the duration of the house arrest, pursuant to rules to be adopted by the bureau." (Based on existing language elsewhere in §66-8-102, the "bureau" being referred to in this new subsection will be interpreted to be the "Traffic Safety Bureau.")

New subsection (Q) of the amended §66-8-102 provides: "As a condition of house arrest, the court may also require an offender to be monitored by an electronic monitoring device, as approved by the bureau, placed on the offender's person. The offender shall pay any costs associated with the house arrest program as ordered by the court, unless determined to be indigent by the bureau." (Again, based on existing language elsewhere in §66-8-102, the "bureau" being referred to in this new subsection will be interpreted to be the "Traffic Safety Bureau.")

New subsection (W)(3) of the amended §66-8-102 adds a definition for the term "electronic monitoring device" which reads as follows: "an active or passive global-positioning-system-enabled device capable of recording and transmitting an offender's location at all times or at designated intervals or a radio frequency device capable of monitoring an offender's location.

SECTION 4 of the Bill amends the language of §66-8-102.3, which is the statute that creates the "Interlock Device Fund." The Interlock Device Fund gets its funding from fees that are charged to individuals who have been convicted of DWI under §66-8-102, or adjudicated as a delinquent under §32A-2-3(A)(1)(a) or who have a driver's license revoked for a violation of the Implied

Consent Act. Under current law the monies in the Interlock Device Fund are utilized by the Traffic Safety Bureau of the Department of Transportation to cover part of the costs of installing, removing and leasing ignition interlock devices for indigent people.

Section 4 of the Bill amends §66-8-102.3 (C) by adding language that would allow the funds in the Ignition Interlock Fund to also be utilized to pay for part of the costs of leasing “home breathalyzer devices” for indigent offenders sentenced to house arrest for a DWI conviction. Under the added language, the funds of the Interlock Device Fund could be used to pay “up to thirty dollars (\$30.00) monthly toward the lease and use of a home breathalyzer device.”

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

The change to current law as provided in SECTION 1 would have the potential to increase the length of time an unknown number of felony offenders could be sentenced to serve in state prisons. An increase in the numbers of state prison inmates would clearly involve increased costs.

The provisions of SECTION 2 requiring “home breathalyzers” and “electronic monitoring devices” for individuals convicted of DWI offenses who are placed on house arrest could result in increased expenses for the State or counties if individuals are determined to be “indigent” under the provisions of the Bill.

SECTION 4 of the Bill does provide a means of funding at least part of the costs of “home breathalyzers” for offenders who have been determined to be indigent, but it is not clear whether the amount of payment for such devices that may be covered by the Ignition Interlock Fund (not more than \$30.00 per month) would fully cover the potential costs, nor is there information on whether the current funding level of the Ignition Interlock Fund is adequate to cover these new expenditures. Finally, SECTION 4 only addresses “home breathalyzer devices” and does not mention other “electronic monitoring devices” so there is no clear provision for how expenses for indigent offenders would be handled if those individuals were placed on house arrest and ordered to be monitored by an electronic monitoring device.

SIGNIFICANT LEGAL ISSUES

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS NEEDED TO IMPROVE THIS BILL