

LFC Requester: _____

**AGENCY BILL ANALYSIS
2016 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 Amendment _____
Correction _____ Substitute _____

Date Jan. 18, 2017

Bill No: HB 049

Sponsor: Stephanie Garcia Richard

Agency Code: 264

Short DWI Interlock Requirements

Person Writing Gary Cade

Title: _____

Phone: 505-507-7752 Email cadeabq@gmail.com

SECTION II: FISCAL IMPACT

Unknown

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

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(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 49 would amend the ignition interlock statutes to require anyone whose driver’s license was revoked for driving while intoxicated (“DWI”) who has not obtained an ignition interlock license and installed an ignition interlock device to, “maintain sobriety and participate in a court-approved sobriety monitoring program” for the same period required if they had installed an interlock device in their vehicle. The bill would also add two new requirements to the current requirements for someone applying for an unrestricted driver’s license. They must provide evidence that they have had at least 20 ignition interlock tests, administered at least a week apart, in the six months preceding their application, and the ignition interlock or sobriety monitoring device has recorded no more than two tests with an alcohol level of no more .05 in the six months prior to reinstatement of their unrestricted license. Persons who did just the sobriety monitoring program would need a minimum of six months “successful participation.”

HB 49 provides that the court-approved program would require the offender’s sobriety be “monitored” at least twice daily but after 12 months of monitored sobriety the frequency could be reduced. Failure to maintain sobriety or comply with the monitoring program could result in a jail term of 48 hours for each failure. If an offender subsequently installed an ignition interlock device and obtained an ignition interlock license the court can suspend the sobriety maintenance and monitoring requirements. Time spent in the court-approved sobriety program must be credited toward the time someone is required to have an ignition interlock license and interlock device(s) installed. They would also have to pay the same fee for use of a breathalyzer device as persons who use an ignition interlock device. Subject to available funds, the state could pay up to \$30/month for the lease and use of a breathalyzer device by an indigent who did not opt for an ignition interlock device.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

HB 49 states that the court-approved sobriety monitoring program, “may include the use of a breathalyzer device that identifies the person giving the sample” and requires sobriety to be monitored at least twice daily.” It is unclear how that would take place. If it would require the DWI driver to appear in person at a probation office, police station or other agency, that might be a hardship for persons in rural areas or without access to public transportation, and appearing twice daily could interfere with their work or other obligations. If the bill anticipates installation of a breathalyzer device in the offender’s home, in addition to problems related to making sure the offender provides the sample to be tested, it might require the device be connected to a telephone line. Fewer people rely on a land line instead of cell phones, and getting a hard line installed and paying for it will probably be a hardship for many offenders. If a device is used that is secured to the offender and records and stores their alcohol levels for download later, it could result in someone having a violation that was not detected for some time.

HB 49 requires an offender to have both an ignition interlock driving license and install an ignition interlock device, or participate in a court-approved sobriety monitoring program. It is possible that some persons may not have a vehicle, especially if they have had multiple DWI convictions, so they could not choose the requirement of (at least) 20 clean weekly BAC tests in the six months preceding their application for an unrestricted driver’s license. The bill requires sobriety tests at least twice daily for 12 months for someone who does not have an ignition interlock driver’s license and an ignition interlock device installed on any vehicle they own. That could mean someone in a court-approved sobriety program could have over 700 tests while someone with an interlock license and installed device might have less than 50 tests. In the six months preceding their application persons with an ignition interlock device may have as few as 20 tests while people in the sobriety monitoring program had over 350. Persons who violate the court approved sobriety program could serve at least 48 hours for each failure to maintain sobriety or comply with the monitoring program, and no standards are prescribed for determining sobriety or program compliance. “Successful participation” is also not clarified so a due process and/or equal protection challenge might be presented.

It is conceivable that someone could be convicted of DWI for driving while under the influence of drugs. See, Sect. 66-8-102(B), NMSA 1978 (“It is unlawful for a person who is under the influence of any drug to a degree that renders them incapable of safely driving a vehicle to drive a vehicle within this state.”) However, they could be required to have an ignition interlock device or participate in a court approved sobriety monitoring program that detect alcohol, not drugs. They could still be using drugs but most monitoring devices are designed to detect just alcohol.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS