

LFC Requester: _____

**AGENCY BILL ANALYSIS
2017 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 Feb. 23, 2017

Bill No: HJC-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: The House Judiciary Committee (“HJC”) substitute for HB 49 would amend the DWI and ignition interlock statutes to require anyone who has not obtained an ignition interlock license and installed an ignition interlock device to, “participate in an approved bureau-approved sobriety monitoring program” for the same period required if they had installed an interlock device in their vehicle or until the end or supervision by the court, whichever is shorter. The sobriety monitoring program would have to include use of a sobriety monitoring device that identifies the person giving the sample, and sobriety tests at least twice a day would be required. If they later switched to an ignition interlock device, time spent successfully maintaining sobriety would be credited toward the time an interlock would be required.

The substitute bill would also add a new requirement for someone applying for an unrestricted driver’s license. In addition to requiring a minimum of six months of successful participation in a court supervised sobriety monitoring program (or proper use of an ignition interlock), the ignition interlock or sobriety monitoring device has recorded no more than two tests with an alcohol concentration of no more .05 in the six months prior to reinstatement of their unrestricted license.

The HJC substitute for HB 49 changed the name to “sobriety monitoring device” from the original draft of “breathalyzer.” Users would also have to pay the same fee for use of a sobriety monitoring device as persons who use an ignition interlock device. Subject to available funds, the state could pay up to \$30.00/month for the lease and use of a sobriety monitoring device by an indigent who did not opt for an ignition interlock device. That is the same price paid to lease an ignition interlock device, but the vehicle devices also require payment of \$50.00 to install the device, and \$50.00 to remove it.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

The HJC substitute for HB 49 would require the sobriety monitoring device identify the person giving the sample and require sobriety to be monitored at least twice daily. If the bill anticipates installation of a sobriety monitoring device in the offender's home, 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 land 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. The initial draft had included sanctions for failing to maintain sobriety or comply with the monitoring program but those were deleted from the substitute bill. There is also no guidance on what consequences should happen for anyone who tampers or interferes with the proper operation of a sobriety monitoring device. Cf., Sect. 66-5-504(B), NMSA 1978 (A person with an ignition interlock license who tampers or interferes or causes another to tamper or interfere with the proper operation of an ignition interlock device may be subject to penalties for driving with a license revoked for DWI or violation of the Implied Consent Act.)

The HJC substitute for HB 49 requires an offender to have either an ignition interlock driving license and installed ignition interlock device, or participate in a court-approved sobriety monitoring program. The substitute bill deleted the requirement of at least 20 clean weekly BAC tests for someone with an ignition interlock device in the six months preceding their application for an unrestricted driver's license and instead requires "verified active usage" for either an ignition interlock or sobriety monitoring device. The substitute would still require sobriety monitoring device testing at least twice daily for a minimum of ninety days and it could be up to 12 months for anyone who does not have an ignition interlock driver's license and an ignition interlock device installed on a vehicle they own for a misdemeanor DWI conviction, and longer for persons convicted of felony DWI's. See, Sect. 66-8-102(E)—(F), NMSA 1978. That could mean someone in a court-approved sobriety program could have several hundred tests while someone with an interlock license and installed device, arguably, might not have any tests. In the six months preceding their license application persons using either device must show "verified active usage," but there is no plain statement how many are required from an ignition interlock device. "Successful participation" for persons in a sobriety monitoring program 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 would still 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. The requirements for obtaining an unrestricted license also include no more than two tests at a level greater than .05 alcohol concentration in the most recent six months of device usage.

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