FISCAL IMPACT REPORT

		LAST UPDATED	
SPONSOR	Rehm	**ORIGINAL DATE**	2/27/2023
SHORT TITLE	DWI With Controlled Substances	**BILL NUMBER**	House Bill 484
		ANALYST	Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD/MVD	No fiscal impact	$26.7	Indeterminate but minimal	$26.7	Nonrecurring	MVD Suspense Fund
AHO	No fiscal impact	$141.2	$145.4	$286.6	Recurring	MVD Suspense Fund
PDD (one FTE)	No fiscal impact	$114.7	$120.4	$235.1	Recurring	General Fund
Courts	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
DPS		Unknown	Unknown	Unknown	Recurring	General Fund
District Attorneys		Unknown	Unknown	Unknown	Recurring	General Fund
**Corrections	No fiscal impact	$274.30	$288.0	$562.3	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.
** Assumes out of 500 additional license revocations, 1 percent will end up incarcerated.

Relates to House Bills 58 and 470

Sources of Information

LFC Files

Responses Received From
Department of Public Safety (DPS)
Law Offices of the Public Defender (LOPD)
New Mexico Corrections Department (NMCD)
Administrative Offices of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
New Mexico Attorney General (NMAG)
Taxation and Revenue Department (TRD)
Administrative Hearings Office (AHO)
New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of House Bill 484

House Bill 484 (HB484) amends multiple sections of the Motor Vehicle Code to prevent driving with cannabis or controlled substances or metabolites in the blood, in addition to alcohol concentrations.

HB484 strikes language in 66-8-102 of state statute to make it unlawful for a person under the influence of alcohol or drug to drive a vehicle, whether capable of driving the vehicle or not.

The bill adds "delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol metabolite or a controlled substance or metabolite concentration" to various sections of law, including the Implied Consent Act, to include driving under the influence of cannabis or other drug under provisions concerning drunken driving. While existing blood alcohol concentration limits remain in law under HB484, the bill does not set out limits for cannabis, controlled drugs, or their metabolites, making driving with any amount unlawful.

The bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

TRD says the estimated cost to implement the changes is $26.7 thousand due to staff workload.

AHO says there is potential for an increase in Implied Consent Act hearings. According to the NMDOT 2020 DWI report, there were 8,233 DWI arrests. Only 30 percent of those arrested requested a hearing. Because this is a new law, it is reasonable to deduce that a larger percentage of arrested drugged drivers may request a hearing. Consequently, AHO estimates that 40 percent of those arrested under the new drugged-driver provisions will request a hearing, resulting in an additional 500 license revocations per year. This is equivalent to one additional administrative law judge.

From AOC:

> To prove its case, the prosecuting authority would have to establish the specific chemical limits set out in this bill through the use of testimony from the State Laboratory Division analyst who tested the blood, as well as any other individuals in the chain of custody for the blood sample. These types of trials take a significant amount of time and judicial resources, due to the number of witnesses and length of time necessary for examination and cross-examination. More witnesses also require more time leading up to trial, due to witness interviews and issues with pretrial discovery. Therefore, courts are required to set more hearings to keep track of such issues and hear motions to resolve outstanding issues prior to trial. Depending on the number of such instances, there may be an increase in the amount of work that needs to be done by the courts.

NMCD and NMSC said making it unlawful for a person under the influence of any drug to drive a vehicle could result in more DUI cases. The impact on the NMCD population would be dependent on the outcome of the conviction and prior offenses for the individual. But it would likely lead to more people being incarcerated. The average per day cost to incarcerate someone in the state's prison system is $150.30 per day; this includes both private and public facilities.

LOPD said the number of filed DUI charges would likely increase under HB484 because there is

no measurement of impairment for drugged driving. Accordingly, more court challenges would occur with respect to drugged driving cases, resulting in an increase in trials, which would increase the workload for LOPD. Further, pursuant to *State v. Schoonmaker*, 2008-NMSC-010, and *State v. Brown*, 2006-NMSC-023, LOPD must pay for expert services for indigent individuals. The cost for an attorney in Albuquerque is $104,860.

Neither the Department of Public Safety nor the Administrative Office of the District Attorneys indicated a fiscal impact. However, both are likely to face some additional costs because of additional arrests and charges.

SIGNIFICANT ISSUES

Agencies explained the bill changes the standard for DWI by drugs to an impaired to the slightest degree standard. It removes the qualifying language that the person must be under the influence "to a degree that renders the person incapable of safely driving a vehicle." It also requires an officer to charge DWI when the blood or breath test contains "any concentration" of THC, THC metabolite, a controlled substance, or a controlled substance metabolite.

NMAG said the lowered standard for impairment and the broad scope of the term "drug" (which includes some cold medicine) would be burdensome for law enforcement and prosecutors when deciding whether or not to arrest and charge an individual with drugged driving. NMAG contends, although it is not clear in the bill, that an officer would be required to charge a defendant with DWI where a defendant's breath test reveals an exceedingly low concentration of alcohol, even if the officer was unconvinced the driver was impaired by alcohol. It removes the discretion from an officer to determine probable cause.

AOC said the bill references a "concentration of delta-9-tetrahydrocannabinol [(THC)] or delta-9-tetrahydrocannabinol metabolite or a controlled substance or a metabolite concentration that is unlawful pursuant to Section 66-8-102 NMSA 1978," however, there is no per se limit for these concentrations set out in 66-8-102. There are no studies showing standard levels of impairment for controlled substances, other than alcohol. Nor are there any "unlawful" concentrations of THC under New Mexico law.

LOPD points out, while blood alcohol concentration has been established as an accurate measurement of impairment, no concentration of THC is a reliable measure. (Marijuana-Impaired Driving - A Report to Congress. (DOT HS 812 440). Washington, DC: National Highway Traffic Safety Administration.[1]) Further, LOPD notes, THC can be detected in the blood days after use for some people. (Erin L. Karshner et al, "Do Δ9-Tetrahydrocannabinol Concentrations Indicate Recent Use in Chronic Cannabis Users?", Addiction. 2009 Dec; 104(12): 2041–2048.[2])

PERFORMANCE IMPLICATIONS

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[1] https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf

[2] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2784185/

AHO says it conducts very few driver's license revocation hearings based on a blood test because law enforcement's ability to obtain a blood test is limited by *Birchfield v. North Dakota*, 579 U.S. 438, 136 S.Ct. 2160 (2016) and *State v. Vargas*, 2017-NMCA-023 and because under the Implied Consent Act, a person's privilege to drive can only be revoked based on a person's specific blood alcohol concentration. HB484, however, expands the Implied Consent Act to include a driver license revocation based on a blood test that indicates a delta-9-tetrahydrocannabinol, or delta-9-tetrahydrocannabinol metabolite, a controlled substance, or metabolite concentration.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB484 relates to HB58, which amends testing and driving under the influence of intoxicating drugs or alcohol, and HB470, which creates the DWI Act in a recompiled and amended Motor Vehicle Code.

PERFORMANCE IMPLICATIONS

DPS said there would be no means to ensure the officer is making a valid arrest at the time of driving, and that the person was under the influence, if the crime is based merely on the use of a drug without proof of actual impairment preventing the person from safely driving a vehicle.

TECHNICAL ISSUES

TRD says the change to Section 66-8-102(B) could make it unlawful for anyone to drive while taking any drug, i.e. statins, blood pressure meds, cancer meds, etc., regardless of degree of impairment.

AODA said given changes in state laws related to cannabis, a cannabis concentration level is needed to guide law enforcement agents on what constitutes a chargeable offense. As such, a cannabis concentration level is needed for statutes related to driving under the influence. The language establishing threshold cannabis concentration levels for impairment should be in addition to the existing threshold levels of alcohol concentrate for intoxication instead of replacing them.

Several statute titles refer to "Intoxication" and not "Impairment". AODA suggests revising titles to add impairment to avoid having new language voided for failure to include in the title.

AHO/rl/hg/mg