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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/09  
 LAST UPDATED 2/19/09      HB 306/aHCPAC

SPONSOR Rehm

SHORT TITLE No Interlocks For Under The Influence of Drugs      SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Department of Health (DOH)

Public Defender (PD)

Department of Corrections (DOC)

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 306 would delete the mention of two specific chemical compounds, benzoylecgonine and 11-nor-9-carboxy-delta-9-tetrahydro cannabinol, from the list of drugs for which a per se level would be established.

According to the Department of Health (DOH), the compounds remaining in HB3 06 are those chemicals by which ingested cocaine, methamphetamines, amphetamines, opioids and cannabinoids cause physical and behavioral impairment.

According to DOH, It would assure that HB306 would limit the drug compounds listed in the per se drugged driving law to those compounds that impair driving and contributed to the impaired behavior observed by law enforcement officer that led to the subjects' arrest.

Synopsis of Original Bill

HB 306 creates a per se crime of driving while under the influence of drugs. This is analogous to the .08 blood alcohol level for DWI. The levels are set out for amphetamine, marijuana, heroin, cocaine and methamphetamine.

House Bill 306 proposes to define unlawful driving under the influence of controlled substances and clarify that the ignition interlock requirement would apply only to persons convicted of driving under the influence of alcohol. HB306 would establish *per se* blood concentration levels of controlled substances detected in the driver within three hours of driving the vehicle, at which degree driving is considered unlawful.

**FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

If law enforcement wants all DWI cases tested for the presence of drugs, the cost for the Scientific Laboratory Division (SLD) would be \$190,000 per year for analyst and test materials, based upon a 60% increase in testing.

However, if the laboratory would be allowed to continue its current practice of testing for drugs only when blood alcohol levels were less than 0.08, there would be no additional cost to the laboratory.

**SIGNIFICANT ISSUES**

In recent years, drugs other than alcohol have increasingly been recognized as hazards to road traffic safety. New Mexico already has a law for alcohol in blood or breath of 0.08%, but it has none for drugs in drivers. Driving under the influence of drugs, or drugged driving, is a legitimate public health concern as it puts drivers, passengers and others who share the road at risk. Driving under the influence of any drug that acts on the brain can impair faculties required for safe driving such as motor skills/coordination, attention, reaction time, and judgment.

Drugged driving is a growing problem in New Mexico. In 2007, 93% of impaired driving cases that had blood alcohol less than 0.08 were positive for drugs. In 14% of these cases there was no alcohol present in the blood. The drugs most frequently associated with drugged driving in New Mexico are cannabis (marijuana-related), cocaine and methamphetamine. The number of drug-involved drivers in motor vehicle crashes increased from 114 cases in 2005 to 196 cases in 2006, an increase of 72% (House Memorial 102: Study Driving While on Drugs, November 2007). From 2001 to 2006, the presence of cocaine, methamphetamine and cannabis in fatally-injured drivers rose 170%, 89% and 200%, respectively.

Under current law, when a driver is suspected of being impaired due to drugs other than alcohol anywhere in New Mexico, blood samples are sent to the Scientific Laboratory Division (SLD) for testing. If drugs are found, the laboratory must send a toxicologist to testify in court as an expert witness to explain how the test result indicates the presence of a drug that could cause the impaired behavior witnessed by the law enforcement officer.

Under HB 306, following demonstration of impairment by law enforcement, the documentation of the presence of certain specified levels of any of the 5 illicit drugs specified- cocaine, marijuana, methamphetamines, amphetamines, heroin, or their biological conversion products would be sufficient for conviction. This would place the emphasis of the prosecution back on the observation of impairment in the driver and restoring the role of the drug test to merely confirming the presence of the drug capable of explaining the observed impairment. Under current law, the emphasis on the specific level of drug, which does not correlate with level of behavioral impairment, is overly burdensome to the prosecution and distracts the focus from the demonstration of impaired behavior. This is completely different from alcohol, for which blood levels do correlate with degree of impairment.

The per se levels of drugs listed in HB 306 are levels used in similar laws in other states and are levels at which the laboratory can detect, quantify and be absolutely certain that the detected drug was present in the person tested. Under the current law, even though drug levels are measured in the blood of the driver, the number does not indicate level of impairment, it only confirms the presence of the drug in the individual's body.

Unlike blood alcohol content standards, there are no established guidelines to define drug-impaired driving. HB 306 proposes to define blood concentration levels for certain illicit drugs, found within three hours of driving, that would be considered drug-impaired driving. HB 306 does not consider over-the-counter or prescription drugs that act on the brain, or situations in which the person may be taking the controlled substance legally, via valid prescription.

### **ADMINISTRATIVE IMPLICATIONS**

According to the Department of Health, HB 306 will likely impact SLD by requiring testing for additional substances in impaired driving cases; and potentially requiring additional expert testimony related to the prosecution of drug-impaired driving cases. HB 306 will require additional workload and may require additional staffing of the SLD.

HB 306 could reduce the burden of expert testimony by the prosecution in criminal DWI cases, and focus on the impaired behavior demonstrated by the driver. HB 306 could reduce the number of court cases throughout the state for which SLD would have to send expert witnesses to testify in the prosecution of impaired driving due to drugs.

### **TECHNICAL ISSUES**

Section 66-8-110 C strikes the standard regarding alcohol concentrations necessary to charge a motorist with violating Section 66-8-102, leaving only the expression, "an alcohol concentration". Evidently the idea was to rely on the alcohol concentrations that are referenced in Section 66-8-102, but the way it is worded here is vague. Recommend replacing "an alcohol concentration" with "a prohibited alcohol concentration".

### **OTHER SUBSTANTIVE ISSUES**

Drugged driving is a growing problem in New Mexico. In 2007, 93% of impaired driving cases that had blood alcohol less than .08 were positive for drugs. The drugs found most commonly amongst drugged drivers were cannabis (marijuana), cocaine and methamphetamine.

14 states in the country have a “per se” law for drugs in drivers. While New Mexico already has a per se law for alcohol in drivers of .08 it has none for drugs in drivers. This bill is fashioned after an existing bill in the State of Nevada.

House Bill 306 establishes a “per se” limit in the blood of drivers for five illegal drugs and their metabolites. Drugs include marijuana cocaine, heroin, amphetamines, and methamphetamines. The bill also allows for the revocation of drivers licenses of drugged driver under implied consent. Lastly, the bill amends current law so that only individuals convicted of alcohol related DWI would be required to get an interlock.

Currently under NM law if a driver is stopped and arrested for DWI after either failing the Field Sobriety Tests and/or an exam by a Drug Recognition Expert, the officer can request a blood sample for alcohol and drug testing. Individuals can be charged with violating the existing NM per se law for alcohol if the blood alcohol level is greater or equal to .08.

In 2007, in response to House Memorial 102 “Study driving while on drugs,” the House Memorial 102 Task Force prepared a report on the extent of the driving under the influence of drugs problem in New Mexico and the status of existing laws in other states. The report also provided recommendations for possible changes to New Mexico law to address driving under the influence of drugs. The report made the following recommendations:

1. The per se legislation should apply to controlled and prohibited substances and their metabolites.
2. The controlled and prohibited substances covered should be specified in a schedule.
3. The per se legislation should apply to any detectable amount in the blood.
4. The per se legislation should not apply to situations where an individual is taking the controlled/prohibited substance legally (via valid prescription). In such cases, impairment would have to be established.
5. The per se law should be implemented within the existing New Mexico Implied Consent Act.

HB 306 would begin to implement the recommendations of the House Memorial 102 Task Force. Further, HB 306 would support the work of the DOT Traffic Safety Bureau’s Drug Recognition Expert program which is established to provide increased detection, apprehension and prosecution of drug impaired drivers in New Mexico.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

There would be no new definition for unlawful driving under the influence of controlled substances, no clarification that the ignition interlock requirement would apply only to persons convicted of driving under the influence of alcohol, and there would be no established *per se* blood concentration levels of controlled substances.