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FISCAL IMPACT REPORT

SPONSOR Rehm ORIGINAL DATE 02/02/21
LAST UPDATED _____ HB 63
SHORT TITLE DWI Blood Tests SB _____
ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$130.9	\$130.9	\$261.8	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB187

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
Office of the Attorney General (NMAG)
Administrative Office of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
Law Offices of the Public Defender (LOPD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 63 amends provisions of the Motor Vehicle Code and Boating While Intoxicated Act relating to blood testing of suspected DWI offenders. The bill removes laboratory technicians from the persons allowed to perform a DWI chemical blood test and adds emergency medical technicians and certified phlebotomists; clarifies that aggravated DWI for refusing to submit to chemical testing is limited to chemical breath testing; makes changes to reflect that authorized blood testing includes substances in addition to alcohol; and removes the limitation in current law that allows search warrants only in felony level DWI cases, which would allow search warrants for a chemical blood test when there is probable cause to believe a misdemeanor has been committed.

The effective date of HB63 is July 1, 2021.

FISCAL IMPLICATIONS

DPS notes that it currently uses private vendors for blood draws. If HB63 is enacted, its provisions allowing search warrants for blood tests in misdemeanor DWI cases will result in a 30 percent increase in the number of blood draws conducted by DPS and will result in increased overtime costs. DPS estimates the fiscal impact of the bill to be \$125.2 thousand for overtime and \$5,700 for contractual services for blood draws.

LOPD states that, to the extent HB63 increases the number of warrants for blood draws, it may increase the number of DWI cases being charged and result in a corresponding increase in LOPD caseload. In addition, LOPD would need to engage defense witnesses in DWI cases based on blood testing to respond to testimony from prosecution witnesses who drew the blood and tested the blood and from experts regarding the effect of a particular drug on the driver's ability to operate a motor vehicle.

AOC believes the bill is unlikely to have a significant fiscal impact on the courts, aside from a possible increase in requests for judicial approval of search warrants. Processing of warrants requires expenditure of judicial and clerical resources.

NMCD states that the bill will have little impact. The only possible impact on NMCD would come from increased convictions due to law enforcement's expanded ability to conduct chemical tests on persons suspected of DWI, which would increase the inmate population.

SIGNIFICANT ISSUES

NMAG states that HB63 addresses issues raised by the New Mexico Court of Appeals. In *State v. Garcia*, 2016-NMCA-044, ¶ 20, the court held that under the current law, emergency medical technicians are not qualified to withdraw blood unless they are employed by a hospital or physician. According to NMAG, the bill also addresses issues raised in court rulings holding it unconstitutional to subject a driver to criminal liability for refusing to submit to a blood test. *See State v. Vargas*, 2017-NMCA-023, ¶ 24 (holding that a driver may be deemed to have consented to a warrantless blood test but may not be subjected to a criminal penalty for refusing to submit to the test), *affirmed*, 2017-NMSC-029.

AOC explains that, under the current law, law enforcement officers may request a blood test warrant only if there is probable cause to believe that a driver committed a felony level DWI offense. Breath tests, which may be compelled absent a warrant, do not show whether someone is operating a motor vehicle under the influence of anything other than alcohol. This can make it difficult to collect evidence showing that a non-felony DWI defendant was operating a motor vehicle under the influence of drugs. AOC states that HB63 addresses this issue by allowing officers to obtain warrants to test the blood of non-felony DWI defendants.

DOH notes that the bill's changes clarifying that blood tests may include alcohol and other substances is consistent with the Scientific Laboratory Division's regulations, under which a "test" can be administered for alcohol and drugs.

LOPD suggests that by authorizing warrants for blood tests in misdemeanor DWI cases, the bill may strain an already overburdened system. Obtaining a blood draw involves the time of at least one officer to get the blood drawn at a hospital. The blood then has to be tested by an authorized laboratory, and admission of the blood tests in court requires expert testimony from a laboratory

analyst. Analysts must be available for pretrial interviews and appear for trial, and often must drive hours from the lab to in order to testify.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 63 conflicts with HB187, which also amends Sections 66-8-102, 66-8-111 & 66-8-111.1 NMSA 1978

BG/rl