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FISCAL IMPACT REPORT

SPONSOR <u>HCPAC</u>	LAST UPDATED _____
	ORIGINAL DATE <u>3/11/23</u>
SHORT TITLE <u>DWI Act</u>	BILL <u>CS/House Bill</u>
	NUMBER <u>470/HCPACS</u>
	ANALYST <u>Hanika-Ortiz</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
TRD (IT changes)	No fiscal impact	\$53.4	No fiscal impact	\$53.4	Nonrecurring	MVD Suspense Fund
DOH (chemical blood tests)	No fiscal impact	\$50.0-\$100.0	\$50.0-\$100.0	\$100.0-\$200.0	Recurring	General Fund
PDD (implied consent issues)	No fiscal impact	\$207.0	\$207.0	\$414.0	Recurring	General Fund
Courts (IT changes and judges/staff education)	No fiscal impact	\$50.0-\$100.0	\$25.0 - \$50.0	\$75.0-\$150.0	Recurring	General Fund
**Corrections (probation violations)	No fiscal impact	\$57.9-\$579.0	\$57.9-\$579.0	\$115.8-\$1,158.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

**Cost per DWI offender per average length of stay is \$57.9

Duplicates in part House Bill 158

Sources of Information

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
 Administrative Hearings Office (AHO)
 New Mexico Attorney General (NMAG)
 Taxation and Revenue Department (TRD)
 Department of Public Safety (DPS)
 Administrative Office of the Courts (AOC)
 New Mexico Department of Transportation (NMDOT)
 New Mexico Corrections Department (NMCD)
 Department of Health (DOH)

SUMMARY

Synopsis of House Bill 470

The House Consumer and Public Affairs Committee substitute for HB470 (HB470/HCPACS) creates the DWI Act in a recompiled Motor Vehicle Code (Chapter 66 NMSA 1978) by proposing new, re compiling existing, and amending sections. The bill also cleans up language in statutes. The bill creates concurrent jurisdiction for first, second, and third DWI offenses between the magistrate and district courts; provides a new penalty for DWI with a teenage minor in the vehicle; makes changes to the list of persons authorized to draw the blood sample; and allows law enforcement to obtain search warrants to conduct chemical blood testing in DWI cases.

Under sections 2 and 3, the bill simplifies the definition of commercial vehicle in the Motor Vehicle Code and strikes the definition from the New Mexico Commercial Driver's License Act.

Section 4 requires an insurance carrier to certify to TRD that a motor vehicle liability insurance policy meets the requirements of the Mandatory Financial Responsibility Act for three years following a person's conviction for DWI and authorizes the secretary to establish by rule that such vehicle insurance policies meet those same requirements for all or a class of motorists.

Section 5 creates the DWI Act as Sections 66-14-1 through Section 66-14-23 NMSA 1978.

Sections 6 and 7 define offenses for driving and aggravated driving, including for commercial vehicles as well, while under the influence of intoxicating drugs or liquor, or both.

Sections 8-14 describe offenses and penalties for the first conviction through the seventh conviction of driving under the influence.

Section 15 reinstates the second-degree felony punishment for an eighth or subsequent DWI.

Sections 16-18 adds an intoxicated driver with a teenage minor in a vehicle who does not cause great bodily harm or death can be assessed a fine and participation in a parenting class.

Section 19 requires a person convicted of a DWI to complete alcohol or drug abuse screening program and, if applicable, a treatment program approved by the court.

Section 20 requires the NMCD, on a felony DWI conviction, to provide substance abuse counseling and treatment to a person that is either in custody or on probation or parole.

Section 21 provides for a DWI conviction with penalties in other jurisdictions to be deemed a conviction for the purpose of determining a second or subsequent DWI offense.

Section 22 allows a court to impose the original sentence with no credit for time served for DWI offenders who violate their probation.

Section 23 grants magistrate courts concurrent jurisdiction with district courts for the first, second, or third DWI offense.

Sections 24-26 recompile and changes references and updates terms to several sections.

Section 27 identifies who may draw blood and limits their liability and also clarifies that certain

persons are only allowed to make an arrest or obtain a blood test if part of their official duties.

Sections 28-33 allows law enforcement to obtain a search warrant for a blood draw for a chemical test under certain circumstances, including if the person refuses the breath/blood test.

Section 38-41 requires an interlock license and ignition interlock device after DWI conviction and outlines the time the device is required. Provides a process for removing the device and requires that the offender be given credit for the time the device was in use prior to sentencing.

Section 42 requires the New Mexico Compilation Commission to title Chapter 66, Article 14, of state law as “Intoxication and Impairment” as a temporary provision.

Section 43 repeals Sections 66-8-102, 66-8-103, and 66-8-104 NMSA 1978.

Section 44 states the effective date of the bill is January 1, 2024.

FISCAL IMPLICATIONS

The bill may increase requests for judicial approval of search warrants, increase the number of blood draws for chemical testing, and increase the number of DWI cases being charged, which would impact law enforcement, judicial resources, and public defender caseloads. The impact for NMCD could come from allowing a court to impose the original sentence with no credit for time served for DWI offenders who violate probation. The average per-day cost to incarcerate in the prison system is \$150.30, according to the Sentencing Commission, and average length of stay is 385 days. For DOH, additional staff may be needed to process the blood samples and provide court testimony.

The Administrative Office of the Courts said the largest fiscal impact of the changes is updating the courts’ case management system to reflect the new statutory sections and to educate judges and staff on where to find the new statutory sections. There would be a period of time where charges would inevitably still be filed under the old sections of law, until people got used to filing under the new sections. This could cause confusion in the courts and may require the amendment of charging documents.

The Law Offices of the Public Defender notes whenever the state draws an unwilling person’s blood, it implicates constitutional rights, and invites litigation on the lawfulness of the search. LOPD could probably absorb the fiscal impact, but depending on the volume of charges initiated by a given district attorney in a locale, there may be a need for additional staff and resources. Salary and benefits for a associate trial attorneys is \$104,860 in Albuquerque and Santa Fe and \$113,350 in the outlying areas. Average support staff (secretarial, investigator, social worker) costs per attorney would total \$102,226.

The Department of Transportation said the substitute bill still removes the definition of a commercial motor vehicle found in the New Mexico Commercial Driver’s License Act. As addressed under technical issues, CMV is defined by federal regulation both under 49 CFR 390 and under 49 CFR 383. The Federal Motor Carriers Safety Administration (FMCSA) may object to the definition of CMV being removed from the Commercial Driver’s License Act for this reason, which could place federal highway funding in jeopardy. Losing federal highway funds would have a significant fiscal impact on NMDOT.

TRD says implementing IT changes for DWI case processing and for tracking of insurance information for persons convicted of DWI for three years is estimated at \$53.4 thousand.

SIGNIFICANT ISSUES

With regards to changes for the Implied Consent Act, NMAG noted the following:

- Proposed Section 66-14-24 conflicts with *Vargas, Storey, and Birchfield*, where a person cannot be held to have consented to a blood test under the theory of implied consent.
- Proposed Section 66-14-25 could conflict with *Mitchell v. Wisconsin*, which allows for a chemical blood test from an unconscious person without a warrant, but it does so under the exigent circumstances exception to the warrant requirement, not under the Implied Consent Act.
- Proposed Section 66-14-28 provides that only a magistrate or a district judge shall be authorized to issue a search warrant for a blood test, while the current statute allows for a municipal judge to issue a warrant as well.

ADMINISTRATIVE IMPLICATIONS

The Traffic Safety Bureau (TSB) at NMDOT has statutory authority to regulate the ignition interlock program. TSB is in the process of updating the rules concerning this program. If enacted, TSB would need to ensure the rules are consistent with the provisions of HB470.

TRD would be required to capture insurance policy information in addition to DWI case processing for persons convicted of a DWI for three years following the date of conviction.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB158 that expands the authorization for, and regulation of, blood-testing under the state DWI statute by including testing for substances other than alcohol, and by authorizing search warrants for blood even when there is probable cause to suspect a misdemeanor has been committed. It also makes changes to the list of persons authorized to draw the blood sample.

TECHNICAL ISSUES

Some sections may be inadvertently omitted in the renumbering of the proposed Article 14.

TRD said there are many statutes in the Motor Vehicle Code that relate back to the Ignition Interlock Licensing, DUI, and Implied Consent Acts that should be changed to maintain consistency.

NMDOT further explained its concern:

The HCPACS amends Section 66-1-4.3 (J) so the definition of CMV found therein tracks the definition of CMV in 49 CFR 390.5T. The inclusion of the definition in Section 66-1-4.3 serves as a general definition for the Motor Vehicle Code. The substitute bill then eliminates the definition of CMV under Section 66-5-54 NMSA 1978, which is part of the Commercial Driver's License Act (Act), and for which the definition of CMV should

be consistent with federal regulation of commercial driver’s license (CDL) holders.

Namely, 49 CFR Part 383.5 provides a definition of CMV in the context of the operation of CMVs by CDL holders. Currently, the definition for CMV in Section 66-5-54 significantly tracks the definition in 49 CFR 383.5. The general definition found in the HCPAC substitute serves as a replacement definition but without being purposefully parallel to 49 CFR 383.5. Pursuant to the HCPAC substitute, the definition of “commercial driver’s license holder” continues to reference 49 CFR Part 383, but only to those standards for which a CDL holder is authorized to operate a commercial vehicle. Given the relevance for which a defined CMV pertains to the Commercial Driver’s License Act, the HCPACS removes a substantive component of the law pertaining to CDLs, one that better tracks 49 CFR Part 383 and provides clarity to the reader regarding the definition of CMV in relationship to CDL holders. Should the FMCSA find the definition for CMV in Section 66-1-4.3 fails to reflect federal regulation for CDL holders, NMDOT may need to demonstrate compliance with federal regulation.

OTHER SUBSTANTIVE ISSUES

The Scientific Laboratory Division of DOH tests for drugs in all implied consent cases in which the blood alcohol level is less than 0.08. In 2018, 90 percent of blood specimens tested for drugs by the lab in DWI cases were positive for drugs other than alcohol.

The New Mexico DWI report found that alcohol-involved fatal crashes account for about 37 percent of all fatal crashes in 2020 (https://gps.unm.edu/gps_assets/tru_data/Crash-Reports/DWI-Reports/2020-dwi-report.pdf).

Federal Centers for Disease Control and Prevention research suggests less is known about the harmful effects of drug-impaired driving compared to alcohol-impaired driving because of data limitations (https://www.cdc.gov/transportationsafety/impaired_driving/impaired-driv_factsheet.html).

The 2020 New Mexico DWI report found that 1,551 convictions in New Mexico were repeat offenders (https://gps.unm.edu/gps_assets/tru_data/Crash-Reports/DWI-Reports/2020-dwi-report.pdf).

A 2022 LFC report on New Mexico treatment courts found that treatment courts operated at approximately 46 percent of capacity (<https://www.nmlegis.gov/handouts/CCJ%20082222%20Item%203%20FY2022%20DTJ-Treatment%20Court%20Report.pdf>).

Age, gender, and prior DUI records are among the best predictors of recidivism. (<https://www.sciencedirect.com/science/article/pii/S0001457505001454>).

ALTERNATIVES

NMSC is undertaking a review and update to the state’s Criminal Code and raises concerns that the Criminal Code has a number of special statutes that fall outside of the normal penalty structure in the state. HB470 continues the use of these special criminal penalties.

AHO/mg/hg/rl/ne/al/r/hg