

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 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 January 16, 2024

Bill No: HB 62-280

Sponsor: Andrea Reeb
Short Analyst Testimony via Video in
Title: Hearings

Agency Name and Code 280-Law Offices of the Public
Number: Defender (LOPD)

Person Writing MJ Edge

Phone: 505-395-2890 **Email** matthew.edge@lopnm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	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:

HB 62 would amend the Implied Consent Act to allow laboratory analysts to testify in court proceedings by interactive video, rather than in person.

FISCAL IMPLICATIONS

The fiscal impact of changes in criminal procedure is difficult to predict. LOPD might have to engage in extensive litigation over constitutional challenges related to the legislation. *See Significant Issues*, below. Additionally, HB 62 would make it easier to bring certain offenses to trial, so it may have a concomitant impact on LOPD having to defend additional cases that go to trial.

SIGNIFICANT ISSUES

Analyst testimony is subject to the kind of face-to-face, in-court confrontation guaranteed by the constitutions of both the United States and the State of New Mexico. These constitutional rights cannot be modified by statute. Convenience does not constitute a valid exception to the confrontation requirement under *State v. Chung*, 2012-NMCA-049, 290 P.3d 269.

Because the bill provides no particular reason for avoiding in person testimony, reliance on the statute would not be sufficient to overcome constitutional mandates for in person testimony. As a result, this legislation could either be held to violate the constitutional mandate, or if a separate constitutional assessment needs to be applied anyway, the bill would simply maintain the status quo: if the prosecution has sufficient justification to request video testimony in a particular case (reasons beyond mere convenience for the witness) then the court may grant an individual request.

PERFORMANCE IMPLICATIONS

As noted above, if HB 62 were enacted, LOPD would possibly have to engage in extensive litigation over constitutional challenges related to the legislation. HB 62 might have profound effects in other areas of criminal procedure that implicate constitutional rights.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

Status Quo. Prosecutors will still be able to have analysts testify by interactive video, provided they can demonstrate some necessity beyond convenience.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo. Prosecutors will still be able to have analysts testify by interactive video, provided they can demonstrate some necessity beyond convenience.

AMENDMENTS

None noted.