

LFC Requester:	Scott Sanchez
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**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 1/23/24
Bill No: HB 152

Sponsor: Rep. William "Bill" R. Rehm
Short Title: DWI Changes

Agency Name and Code AOC
Number: 218
Person Writing Charlene Romero
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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: House Bill 152 would amend certain Sections of the Motor Vehicle Code related to DWIs.

Section 1 of the Bill would amend Section 66-8-102 NMSA 1978, to remove the term “to a degree that renders the person incapable of safely driving a vehicle” from paragraph B. The Bill would also amend the requirement for an offender to place an ignition interlock device on his or her vehicle, to only apply to offenders who had an alcohol concentration in their blood or breath, in paragraph O. The Bill would also make stylistic, non-substantive changes to paragraphs O and P.

Section 2 of the Bill would amend Section 66-8-110 NMSA 1978, paragraph C, to say “The arresting officer shall charge the person tested with a violation of Section 66-8-102 NMSA 1978 when the blood or breath of the person contains an alcohol concentration, any concentration of delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol metabolite or a controlled substance or metabolite concentration that is unlawful pursuant to the provisions of Section 66-8-102 NMSA 1978.” It would also amend paragraph E to add that results from tests performed under the Implied Consent Act that are administered more than three hours after the person was driving a vehicle may also be introduced as evidence to show delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol metabolite or controlled substance concentration in the person's blood or breath at the time of the test.

Section 3 would amend Section 66-8-111 NMSA 1978, paragraph C, to allow the Motor Vehicle Division to revoke someone’s driver’s license if there is an affidavit from an arresting officer stating reasonable grounds to believe that the person was driving under the influence of “delta9-tetrahydrocannabinol or a delta-9-tetrahydrocannabinol metabolite or a controlled substance and that the person submitted to chemical testing pursuant to Section 66-8-107 NMSA 1978 and the test results indicated an alcohol concentration, any concentration of delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol metabolite or a controlled substance or a metabolite concentration that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an alcohol concentration in the person's blood or breath of two one hundredths or more if the person is less than twenty-one years of age.” The Bill would also make stylistic, non-substantive changes to paragraphs C and E.

Section 4 would amend Section 66-8-111.1 NMSA 1978, paragraph A, to direct written notice of revocation and of right to a hearing before the administrative hearings office pursuant to the Implied Consent Act on a person who... “submits to a chemical test the

results of which indicate an alcohol, a controlled substance or a metabolite concentration or any concentration of delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol metabolite that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an alcohol concentration in the person's blood or breath of two one hundredths or more if the person is less than twenty-one years of age.”

Section 5 would amend Section 66-8-112 NMSA 1978, paragraphs E and F, to allow the administrative revocation hearing to determine whether “the test results indicated an alcohol, a delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol metabolite, a controlled substance or a metabolite concentration that is unlawful pursuant to Section 66-8-102 NMSA 1978 or an alcohol concentration in the person's blood or breath of two one hundredths or more if the person is less than twenty-one years of age.”

FISCAL IMPLICATIONS

Any fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. To prove its case, the prosecuting authority would have to establish the specific chemical limits set out under this Bill through the use of testimony from the State Laboratory Division (SLD) 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, thus requiring additional resources to handle the increase.

Removing the requirement for non-alcohol impaired offenders to have an ignition interlock device placed on their vehicles would remove the need for courts to monitor compliance with this condition, for those offenders. However, as those offenders would still be required to complete other mandatory sentencing conditions, the decrease in monitoring activities by the court would be de minimis.

SIGNIFICANT ISSUES

It should be noted that this Bill would remove the language under Section 66-8-102(B) NMSA 1978, which says “to a degree that renders the person incapable of safely driving a vehicle” so that Section would just say, “[i]t is unlawful for a person who is under the influence of any drug to drive a vehicle within this state.” This adjustment would reflect the language in Section 66-8-102(A), which makes it “unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.” The New Mexico Supreme Court has held that the term “under the influence” means that a person is to the slightest degree less able, either mentally or physically or both, to exercise the clear judgment and steady hand necessary to handle an automobile with safety to himself and the public. *See State v. Deming*, 1959-NMSC-074, 66 N.M. 175, 344 P.2d 481. Therefore, there would be no reason to conclude that the courts would apply a different meaning to the term as used in Section 66-8-102(B), even without the explicit statutory language which the Bill would remove.

Sections 2, 3, 4, and 5 of the Bill reference 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 that are set out in Section 66-8-102. Therefore, there is no per se unlawful amount, and the amount that is unlawful is subject to an adjudication that the amount renders the driver “under the influence.” Therefore, reference to a specific concentration that is “unlawful” is moot without a specific, unlawful concentration established by law. There are no widely accepted scientific studies which show standard levels of impairment for controlled substances, other than alcohol. The nationally recognized level of impairment for drunken driving is .08 g/mL blood alcohol concentration. But there is no similar national standard for drugged driving. Drugs do not affect people consistently, like alcohol. Drugs such as cannabis can also stay in the system for weeks, thus appearing in roadside tests while no longer causing impairment. Challenges to the rational basis of these per se limits, particularly to that of now legalized cannabis, could have a significant fiscal impact on the courts. There are no “unlawful” concentrations of THC under New Mexico law. Drugged driving cases require a showing by the state that the driver was impaired to the slightest degree by the consumption of cannabis or another drug or controlled substance.

It is impermissible to compel a warrantless blood test of an individual, under both the US and New Mexico constitutions. *See Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016); *State v. Vargas*, 2017-NMSC-029. It is also impermissible to criminally punish an individual for refusing to submit to a warrantless blood test, including imposing aggravated DWI penalties. *Id.* Under Section 66-8-111 NMSA 1978, New Mexico law enforcement officers are limited in how and when they can request a warrant for a blood test of a suspected DWI offender. Under the current version of the law, officers may only request a blood test warrant if there is probable cause to believe that the person 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. Therefore, under the current version of the law, officers have a difficult time collecting evidence to show that a non-felony level DWI defendant was operating a motor vehicle under the influence of drugs unless the driver voluntarily submits to a blood test.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 55 and HB 65 also amended Section 66-8-102 NMSA 1978.

SB 190 also amends Sections 66-8-102, 66-8-110, 66-8-111, 66-8-111.1 and 66-8-112 NMSA 1978.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS